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IN THE

Supreme Court of the United States

OCTOBER TERM 1938

No. 554

H. C. RORICK, JOSEPH R. GRUNDY and J. R. EASTON,

Appellants,

v.

BOARD OF COMMISSIONERS of Everglades Drainage District, etc., *et al.*,

Appellees.

APPEAL FROM DECREE OF SPECIALLY CONSTITUTED THREE-JUDGE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLANTS

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BRIEF FOR APPELLANTS

This is an appeal from a decree of a specially constituted three judge district court for the Northern District of Florida, dated August 2, 1938 (R. 246-8), in a suit in equity, in which plaintiffs, appellants herein, as holders of bonds issued by the Board of Commissioners of Everglades Drainage District, a tax district in the State of Florida, sought to enjoin the Board of Commissioners of said District, the Trustees of the Internal Improvement Fund of the State of Florida, and the tax assessors and tax collectors of said District from the enforcement and execution of statutes of the State of Florida enacted in

the years 1929, 1931 and 1937, after the said bonds had been issued and were outstanding, upon the ground that said statutes, in violation of section 10 of Article I of the Constitution of the United States, impair the obligation of the contract between plaintiffs as bondholders of the District and the Board of Commissioners of said District, and that said statutes, in violation of the 14th Amendment to the Constitution of the United States deprive the plaintiffs of their property without due process of law. The contract between plaintiffs, appellants herein, and the Board of Commissioners of said District is represented by the bonds issued by said Board of Commissioners and held by the plaintiffs and by the statutes of the State of Florida which authorized the issue of said bonds, levied acreage taxes upon the lands in said District for the payment of the bonds, and set aside, appropriated and pledged the taxes in the hands of a separate custodian for such payment.

By the decree under review (R. 246-8), the specially constituted district court denied the motion of plaintiffs, appellants, for an interlocutory injunction, restraining the action of the defendants, appellees, in the enforcement and execution of Chapter 17902, Laws of Florida of 1937, denied plaintiffs' motion to reinstate a former interlocutory decree enjoining the enforcement of Chapter 14717, Laws of Florida of 1931, and granted defendants' motion to dismiss the bill of complaint and supplemental bills.

Opinions Below

The opinion of the specially constituted district court on the application of plaintiffs, appellants to enjoin the enforcement of the statute of Florida enacted in the year 1937, and on the application of defendants, appellees, to dismiss the bill of complaint and supplemental bills, which

applications resulted in the decree from which this appeal is taken, rendered August 2, 1938 (R. 246-8), is reported in 24 Fed. Supp. 458. The opinion of the specially constituted district court on the application of plaintiffs, appellants to enjoin the enforcement of the statute of the State of Florida enacted in the year 1931, which application was granted (R. 79-83), and on the motions of defendants made at that time to dismiss the bill of complaint and supplemental bill, which motions were denied (R. 83), was rendered April 13, 1932, and is reported in 57 Fed. 2d 1048 (R. 84-110).

Jurisdiction

The decree of the specially constituted district court from which the present appeal is taken (R. 246-8) was entered on August 4, 1938. An order and decree was made without opinion, by the district court on September 2, 1938, overruling and denying plaintiffs' application for rehearing (R. 266). The jurisdiction of this court is invoked under Judicial Code, section 266, as amended by Acts of March 4, 1913, c 160 and Act of February 13, 1925, c 229 Sec. 1; 28 USCA, Sec. 380. The petition for appeal was granted by the District Court on November 22, 1938 (R. 267-8).

The rights under the Federal Constitution relied upon in this appeal and in this brief were raised in the original and supplemental bills of complaint (R. 55) and in the application of plaintiffs, appellants for interlocutory injunction restraining the enforcement of statutes of the State of Florida by state officers in violation of the Constitution of the United States. The constitutional questions arising from the allegations of the bill of complaint and supplemental bills and the application by plaintiffs for interlocutory

injunction are whether certain statutes of the State of Florida enacted in the respective years 1929, 1931 and 1937 impair the obligation of the contract of plaintiffs, appellants with the Board of Commissioners of Everglades Drainage District, represented by the bonds issued by said Board of Commissioners and held and owned by the plaintiffs, and by the statutes of the State of Florida authorizing the issue of said bonds, in the essential respects hereinafter more fully set forth, including the making of substantial reductions in the amount of the acreage taxes levied by the statutes under which the bonds were issued for the payment of the bonds and necessary for their payment, by diverting from the payment of the bonds a substantial part of the acreage taxes which had been appropriated and set aside for their payment, by destroying the sinking fund for the payment of the principal of the bonds, by authorizing the use of bonds and coupons of the District instead of money in the redemption of tax sale certificates and tax liens on tax delinquent lands, representing overdue and unpaid acreage taxes, and by relieving the Trustees of the Internal Improvement Fund of the State of Florida from the obligation to pay acreage taxes on lands bid off for them at tax sales as provided in the statutes authorizing the issue of the bonds.

It is alleged in the bill of complaint and supplemental bills that the bonds of the District held by the plaintiffs and the statutes authorizing the issue of the bonds and levying the acreage taxes for their payment constitute a contract between the plaintiffs and the Board of Commissioners of the District (R. 7, 13, 19, 31, 58), and it is so provided in the said statutes themselves; that subsequent statutes of the State of Florida enacted in the years 1929, 1931 and 1937, after the contract between plaintiffs

and the Board of Commissioners had been made, violate the Federal Constitution by impairing the obligation of plaintiffs' contract and by depriving plaintiffs of their property without due process of law, in reducing substantially the taxes levied by the statute for the payment of the bonds (R. 31-33, 58-60, 216-217), in diverting the proceeds of the taxes from the payment of the bonds (R. 59, 218) and in the various other respects alleged in the bill of complaint and supplemental bills. A primary purpose of the bill and supplemental bills of complaint is to restrain officers of the State of Florida from enforcing and executing said statutes of the State upon the grounds that said statutes violate the Federal Constitution. The officers of the State of Florida whose action is sought to be restrained are the State Treasurer, who is the custodian of the proceeds of the acreage taxes levied for the payment of the bonds, and appropriated and set aside in his hands for that purpose; the Trustees of the Internal Improvement Fund of the State of Florida, composed of the Governor of the State, the Attorney General of the State, and the three other principal State officers, who are sought to be enjoined, from enforcing and executing the subsequent State statutes upon the ground that such statutes relieve the Trustees of the Internal Improvement Fund from the obligation of paying acreage taxes on the lands bid off for them at tax sales; the Board of Commissioners of Everglades Drainage District who are the agents of the State of Florida for the purpose of administering in this Tax District the swamp and overflow lands granted to the State of Florida by the United States with the statutory duty of draining and reclaiming said lands.

Everglades Drainage District v. *Florida Ranch & Dairy Corporation,* 74 Fed. 2d 914 (C. C. A. 5C) is distinguish-

able since the Court of Appeals in that case held that the plaintiff therein had an adequate remedy at law, and it is also distinguishable on the ground that neither the state treasurer nor the Trustees of the Internal Improvement Fund of the State of Florida were parties to that suit; *Ex Parte Everglades Drainage District,* 293 U. S. 521, is the same case on application for writ of mandamus. In *Stratton* v. *St. Louis Southwestern Ry. Co.,* 282 U. S. 10, the appeal in a three judge case was dismissed because there was an adequate remedy at law.

In *Arundel Corporation* v. *Griffin,* 89 Fla. 128, 103 So. 422, the Court stated in respect of Everglades Drainage District:

> "The Board created by the above quoted statute is an agency of the State and the authority conferred upon the Board is exercised for the State and not for a subdivision of the State or for any private purpose or company."

The Everglades Drainage District was formed for the purpose of draining and reclaiming the lands therein and protecting them from the effects of water, for agricultural and sanitary purposes, and for the public convenience and welfare, and for the public utility and benefit, as was the drainage district involved in *O'Neill* v. *Leamer,* 239 U. S. 244.

The jurisdiction of the Supreme Court to hear this appeal is sustained by the holdings in *Stratton* v. *St. Louis Southwestern Ry. Co.,* 282 U. S. 10; *Sterling* v. *Constantin,* 287 U. S. 378; *Spielman Motor Sales Co.* v. *Dodge,* 295 U. S. 89; *Interstate Busses Corp.* v. *Blodgett,* 276 U. S. 245; *Suncrest Lumber Co.* v. *North Carolina Public Park Commission,* 29 Fed. 2d 823 (C. C. A. 4); *Polk Co.* v. *Glover,* 83 L. Ed. 73.

Statement

This suit in equity was instituted by plaintiffs as holders of bonds of Everglades Drainage District on May 19, 1931 (R. 2) for the purpose of having adjudged unconstitutional and of enjoining the enforcement of a statute of the State of Florida enacted on June 10, 1929 (Chapter 13,633, Laws of Florida of 1929) on the ground that the statute impaired the obligation of plaintiffs' contract with the Board of Commissioners of the District and deprived plaintiffs of their property without due process of law. Upon the same grounds and for the same purpose the first supplemental bill was filed on July 4, 1931 (R. 55) in respect of the statute of the State of Florida enacted on May 20, 1931 (Chapter 14,717, Laws of Florida of 1931), and the second supplemental bill was filed on July 19, 1937 (R. 208) in respect of the statute of the State of Florida enacted on June 10, 1937 (Chapter 17,902, Laws of Florida of 1937).

The contract which plaintiffs allege in the bill and supplemental bills is impaired by the statutes of 1929, 1931 and 1937 of the State of Florida is between the plaintiffs as bondholders of Everglades Drainage District and the Board of Commissioners of that District, and is represented by the bonds of the District held and owned by plaintiffs, both original bonds and refunding bonds (R. 11-12), payable in gold coin or its lawful equivalent in money of the United States, and by the statutes of the State of Florida which authorized the issue of the bonds, levied acreage taxes upon the lands within the District for the payment of the bonds, and appropriated and set apart the acreage taxes in the hands of the State Treasurer, as a separate custodian, for the payment of the bonds.

The Everglades Drainage District was established by a statute of the State of Florida (R. 3, 16-17) (Chapter 6456, Laws of Florida of 1913), as a tax district, in the year 1913 for the purpose of reclaiming and improving the lands in the District for the public welfare (*Lainhart* v. *Catts*, 73 Fla. 735, 75 So. 47). It consisted of approximately 4,000,000 acres of land in southern Florida contiguous to Lake Okeechobee, the principal part of which consists of swamp and overflowed lands granted by the United States (R. 3) to the State of Florida in the year 1850 (Act of Congress of September 28, 1850, United States Statutes at Large, Vol. 9, p. 519), subject to the obligation of the State of Florida to the United States under the granting statute to reclaim the same as therein provided (R. 4). By statute enacted in 1855 (Chapter 610 of the Laws of Florida of 1855), the State of Florida vested in the Trustees of the Internal Improvement Fund the title to said swamp and overflowed lands so granted to the State by the United States with provisions in said statute as to the powers and duties of said Trustees in respect of said lands (R. 4-5). The Trustees of the Internal Improvement Fund have always consisted of the five principal state officers, including the Governor, the Attorney General, the Comptroller, the State Treasurer and the Commissioner of Agriculture (R. 85).

The Trustees of the Internal Improvement Fund holding the title to the said lands as fiduciaries for the State of Florida were directly in charge of the reclamation and management thereof, and in the performance of their duties sold some of the lands, made gifts of some to railroad companies and others, and retained much of the lands which the Trustees improved in accordance with their ideas and the funds available to them for that purpose (*Trustees* v. *Root*, 63 Fla. 666, 58 So. 371). After this long period of trustee

management the policy was adopted by the State in the year 1913 of forming a District (Everglades Drainage District) for the purpose of improving said lands, one of the primary purposes of which was to sell bonds of the District to the public, the proceeds thereof to be used in reclaiming and improving the lands in the District more expeditiously than the Trustees were able to do out of their own funds (R. 85).

The statutes of the State of Florida (Chapter 6456, Laws of Florida of 1913, as amended) under which the District was formed and pursuant to which the bonds of the District were authorized to be issued and were issued, divide the lands of the District into zones, and levy graduated acreage taxes upon such lands, appropriate and set aside the taxes in the hands of a separate custodian for the payment of the bonds, and provide that in the event taxes on the lands are unpaid, the particular lands on which the taxes are unpaid shall be offered for sale by the tax collectors of the counties in which such lands are located and if they are not purchased at such sale for the amount of the defaulted taxes and costs, they shall be bid off for the Trustees of the Internal Improvement Fund who, plaintiffs contend, must thereafter pay the acreage taxes levied by the statutes on the bid off lands. During the period in which the bonds of the District were being issued and for some time thereafter the Trustees did pay the taxes on the bid off lands (R. 31). The provision for bidding off the lands for the Trustees was made by an amendment enacted in 1917 (Chapter 7305, Laws of Florida of 1917), at the time when the first bonds of the District were sold and was a substitute for a provision theretofore contained in the Everglades statute of 1913, that such lands should be bid off for the Board of Commissioners of the District (R. 20, 102-3). At the time the District was formed in 1913 about one-fourth of all the lands

in the District were owned by the Trustees of the Internal Improvement Fund (R. 5).

Section 19 of the original Everglades statute of 1913 authorized the Board of Commissioners to issue bonds not exceeding six million dollars principal amount outstanding at any time. That section has been amended from time to time to authorize the issuance of not exceeding $14,250,000 principal amount of bonds exclusive of those authorized but never issued by Chapter 12016, Laws of 1927, now repealed (R. 8-9). No bonds were issued until section 19 of the original statute was amended by Chapter 6957, Laws of 1915 (R. 12), to provide that "nothing herein contained shall be deemed a limitation of the right of the legislature to authorize additional bonds of said board, payable from drainage taxes within said district, provided any such additional authority shall be accompanied by the levy and imposition of additional taxes or assessments sufficient to meet the payment of the bonds authorized and interest thereon as the same shall become due; such payment to be provided for by a sinking fund as herein required, and such additional bonds shall constitute an obligation of equal dignity with the bonds herein authorized and equally with the bonds herein authorized may be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds or series of bonds over any other bonds or series of bonds" (Chapter 6456, Sec. 19 as amended; Revised General Statutes of Florida of 1920, Sec. 1178). That section, as so amended, remained in effect during the entire period in which bonds of the District were issued (R. 88).

As future issues were authorized the acreage taxes were increased to provide funds for the payment of the additional bonds. Under section 19 of the 1913 Everglades

statute as amended, bonds aggregating $3,500,000 were issued before 1918, which have all been retired in part by payment and in part by refunding bonds issued by authority of Chapter 10027, Laws of Florida of 1925. By authority of successive amendments of section 19 of the original 1913 statute, additional bonds have been issued under Chapter 7862 of 1919, Chapter 8413 of 1921, and Chapter 9119 of 1923, codified as section 1178 Revised General Statutes of Florida, 1920, and section 1553 Compiled General Laws, 1927. Chapter 10026 of 1925, authorized $3,000,000 principal amount of additional bonds which have never been issued. Chapter 10027 of 1925 authorized the issuance of refunding bonds, which have been issued to the extent of $3,842,000 and used to refund in part the bonds issued under the 1913 statute as amended (R. 8-9, 12-13, 89). There are now outstanding approximately $9,919,000 (R. 14) principal amount of bonds including the refunding bonds. No question has been raised as to the validity of the bonds or as to the validity of the statutes authorizing the issue thereof, these questions having already been determined by the Florida Supreme Court in several cases, including *Lainhart* v. *Catts*, 73 Fla. 735, 75 So. 47, and *Bannerman* v. *Catts*, 80 Fla. 170, 85 So. 336.

The bonds were of serial maturities, and the interest on the bonds and the serial maturities was paid currently until January 1, 1931, when default was made in the payment of the interest on all bonds and the principal of bonds which became due on that date (R. 11). At the time the second supplemental bill was filed attacking the 1937 Everglades statute as unconstitutional, the amount of principal alone then due and unpaid on the outstanding bonds was in excess of the sum of $2,938,357 (R. 216-217). The plaintiffs are the owners of substantial amounts of bonds

both original and refunding, the interest and principal of which were in default and are now in default (R. 11-12). The original 1913 Everglades statute provides that the "faith and credit" of the Board of Commissioners shall be pledged by said bonds (Chapter 6456, Sec. 21, as amended; R. G. S., Sec. 1180). Each bond itself pledges the faith, credit and resources of the District for such payment thereof (R. 53).

Plaintiffs allege in the bill and supplemental bills the nature of the contract between the plaintiffs as bondholders and the Board of Commissioners of the District, including the pertinent provisions of the statutes which authorized the issue of the bonds, the levy of the acreage taxes and the appropriation thereof for the payment of the bonds; plaintiffs also allege the various respects in which the statutes of the years 1929, 1931 and 1937 impair the obligation of the plaintiffs' contract and deprive them of their property without due process of law. The substantial rights which the plaintiffs allege they have under their bond contract and the impairment thereof by the statutes of 1929, 1931 and 1937 are as follows:

1. The plaintiffs allege, in substance, that the statutes which authorized the issue of the bonds of the District levied acreage taxes for the payment of the bonds upon the lands in the District at rates specified in the statutes, that such taxes were necessary for the payment of the bonds and were included in the bond contract (bill, R. 16-17; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-217).

The plaintiffs allege that the subsequent statutes of the years 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to the acreage taxes by reducing substantially the acreage taxes levied for the payment of the bonds, without substi-

tute and without the consent of plaintiffs, at the time when plaintiffs' bonds were in default (R. 11-12), and other bonds were in default, and the reduced taxes were not adequate to pay the principal and interest of the bonds then in default and as they would mature in the future. The total amount of the acreage taxes levied upon the lands within the District by the statutes under which the bonds were issued for the year 1937 was approximately $2,250,000 and the total amount of acreage taxes levied by the subsequent statute of 1937 for the same year is approximately $595,000 (R. 217; bill, R. 31-33; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-217, 219-220).

This impairment of the obligation of plaintiff's contract involves alone the reduction of the acreage taxes to a point where they are substantially inadequate to pay the principal and interest of the bonds.

2. The plaintiffs allege in substance that the statutes which authorize the issue of the bonds levied the acreage taxes for the payment of the bonds, appropriated and set aside the acreage taxes in the hands of a separate custodian for the payment of the bonds, and made a condition to the issue of additional bonds that additional taxes sufficient to pay the bonds should at the same time be levied by the statutes. Additional bonds were issued and additional taxes were levied (bill, R. 16-19; 1 sup. bill, R. 58; 2 sup. bill, R. 216-218).

The plaintiffs allege that the subsequent statutes of the years 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to the acreage taxes by diverting substantially the proceeds of the taxes to purposes other than the payment of the bonds, without substitute and without the consent of plaintiffs, at a time when plaintiffs' bonds were in default, and other

bonds were in default, and the remaining proceeds of
age taxes applicable to the payment of bonds were not
quate to pay the principal and interest of the bonds
in default and as they would mature in the future (bil
31-33, 39-40; 1 sup. bill, R. 58-59; 2 sup. bill, R. 216-220)

This impairment of the obligation of plaintiffs'
tract involves the diversion of the reduced taxes to
poses other than the payment of the bonds so as to le
available substantially less taxes than were necessary
that purpose.

3. The plaintiffs allege in substance that the statu
which authorize the issue of the bonds and the bonds the
selves require payment of the principal and interest
the bonds in lawful money of the United States (Chapt
6456; Sec. 20; R. G. S., Sec. 1179) and do not authorize t
payment of acreage taxes levied for the payment of th
bonds in anything but lawful money of the United State
(Chapter 6456, Sec. 10 as amended; R. G. S., Sec. 1169
(bill, R. 13-14, 16-17, 33-34; 1 sup. bill, R. 56; 2 sup. bill, R
216-217).

The plaintiffs allege that the subsequent statutes of th
years 1931 and 1937 impair the obligation of plaintiffs
contract in respect of the foregoing right to have the prin
cipal and interest of the bonds paid in money, by provid
ing that the acreage taxes may under the conditions pro
vided in the subsequent statutes be paid by cancellation
of bonds and coupons of the District (1 sup. bill, R. 63-64;
2 sup. bill, R. 222-223).

This impairment of the obligation of plaintiffs' con
tract involves the use of bonds and coupons of the Dis
trict instead of money in the payment of acreage taxes
when the taxes if paid in money were not sufficient to pay

the matured and maturing principal and interest of the bonds in full.

4. The plaintiffs allege in substance that the statutes which authorize the issue of bonds require that in the event taxes on the lands in the District are unpaid, the particular lands on which the taxes are unpaid shall be offered for sale by the tax collectors of the counties in which such lands are located and if they are not purchased at such tax sale for the amount of the defaulted taxes and costs, they shall be bid off for the Trustees of the Internal Improvement Fund who must thereafter pay the acreage taxes thereon (bill, R. 15, 19-31; 1 sup. bill, R. 55-56; 2 sup. bill, 209-210).

The plaintiffs allege that the subsequent statutes of the years 1931 and 1937 impair the obligation of plaintiffs' contract in respect of the foregoing right to have the Trustees pay the taxes on the bid off lands by providing that the lands at such tax sales shall be bid off for the Board of Commissioners instead of the Trustees of the Internal Improvement Fund and that thereby the lands are freed from the obligation to pay the acreage taxes and the Trustees are released from the obligation to pay such taxes (1 sup. bill, R. 60-63).

This impairment of the obligation of plaintiffs' contract involves the release of certain lands from the payment of acreage taxes, and the release of the Trustees of the Internal Improvement Fund from the obligation to pay acreage taxes levied upon such lands.

The questions on this appeal arise through the application of plaintiffs, appellants for interlocutory injunction to restrain the enforcement of the subsequent statutes of the years 1929, 1931 and 1937, and through the motions of defendants, appellees, to dismiss the bill and supplemental

bills of complaint. On the motion of plaintiffs appellants to have declared unconstitutional the statutes of the years 1929 and 1931 and to enjoin their enforcement, and on the motion of defendants appellees to dismiss the bill of complaint attacking the 1929 statute and the first supplemental bill attacking the 1931 statute, the federal district court, on September 17, 1932 entered an interlocutory decree dated September 6, 1932, restraining the enforcement of the statutes of 1929 and 1931 and on September 17, 1932, entered an order denying the motion of defendants to dismiss the bill of complaint and the first supplemental bill. The court filed an elaborate opinion supporting the decree dated September 6, 1932, in which it set forth at length the respects in which the statutes of the years 1929 and 1931 had impaired the obligation of plaintiffs' contract. Thereafter the defendants appellants filed their answers to the bill of complaint and first supplemental bill. Later, by order dated February 23, 1933, the interlocutory decree entered on September 17, 1932 was vacated solely through failure of plaintiffs to file the bond required by said decree (R. 205).

After the determination of the district court, the Board of Commissioners persisted in their refusal to take the action necessary to have the taxes forming part of the bond contract extended on the tax rolls in order that the tax collectors might collect the taxes, and then applied to payment of the bonds. It was necessary to bring mandamus proceedings to have the Board of Commissioners take the necessary action. In *Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, 559, 587 (decided April, 1933, November, 1933 and February, 1934) in such a mandamus proceeding, the Supreme Court of Florida held that the 1931 statute was unconstitutional, that the rates of acreage taxes therein contained were not the rates required to be extended on the tax

rolls but the rates levied by the 1925 statute were the proper rates, and not as the federal district court had determined in its decree of September 6, 1932, the rates contained in the statute of 1923 (Chapter 9119), and the court gave judgment that peremptory writ of mandamus to that effect issue.

Later a statute of the State of Florida was enacted on June 10, 1937 (Chapter 17902, Laws of Florida of 1937), which still further impaired the obligation of plaintiffs' contract. The plaintiffs' second supplemental bill filed July 19, 1937 was directed against the 1937 statute on the ground that it impaired the obligation of the contract and application was made by plaintiffs for an interlocutory decree enjoining the enforcement of the 1937 statute; at the same time the defendants, appellees, made a motion to dismiss the bill of complaint and the first and second supplemental bills of complaint and both applications were heard by the court at the same time. The district court, which in 1932 had granted the plaintiffs' motion to enjoin the enforcement of the statutes of 1929 and 1931 upon the ground that they impaired the obligation of plaintiffs' contract, and had entered the decree of September 6, 1932 to that effect, and had denied the motion of defendants-appellees to dismiss the bill of complaint and first supplemental bill, in the year 1938 denied plaintiffs' motion to have the 1937 statute declared unconstitutional, which is alleged to have impaired beyond the statutes of 1929 and 1931 the obligation of plaintiffs' contract, and granted the motion of defendants-appellees to dismiss the complaint, the first supplemental bill of complaint and the second supplemental bill of complaint, and there was entered the decree dated August 12, 1938, from which the present appeal is taken. The district court denied the petition for rehearing without opinion.

It is alleged by the plaintiffs, appellants, and it is admitted by the motion of defendants, appellees to dismiss that each of the statutes of 1929, 1931 and 1937 was enacted by the legislature upon the application and recommendation of the Board of Commissioners of the District (R. 31, 56-57, 59, 212-213). When the Board of Commissioners made such recommendations in respect of the 1929 statute, it was composed entirely of the five state officers, including the Governor and the Attorney General who were and always have been the Trustees of the Internal Improvement Fund; when the recommendation was made as to the enactment of the 1931 Act, the state officers constituted five of the ten members of the Board of Commissioners, and when the recommendation was made as to the 1937 statute, the state officers had caused themselves to cease to be members of the Board, and the Board was then composed of landowners in the District appointed by the Governor. These state officers as such recommended the enactment of these statutes after they had administered the affairs of this District as state officers during the whole period in which the bonds of the District were sold to the public and their proceeds applied to the making of improvements in the District.

The questions raised on this appeal involve only the allegations of the bill of complaint and supplemental bills and the interpretation of the state statutes, since the questions were all raised upon an application for interlocutory decree enjoining enforcement of the statutes on the ground of their unconstitutionality, and by the motions of defendants, appellees to dismiss the bill of complaint and the first and second supplemental bills.

Specifications of Errors to be Urged

The District Court erred:

1. In making and entering its final judgment and decree of August 2, 1938, dismissing the bill of complaint and supplemental bills of complaint herein.

2. In denying the application of plaintiffs to reinstate the interlocutory injunction granted by it on September 6, 1932.

3. In denying the application for interlocutory injunction restraining the enforcement of Chapter 17902, Laws of 1937.

4. In making the order of September 2, 1938, overruling and denying plaintiffs' application and petition for rehearing.

5. In holding that the Supreme Court of Florida had passed upon all questions presented in the bill of complaint and supplemental bills adversely to plaintiffs.

6. In holding in effect that as to all questions presented by the bill of complaint and supplemental bills the Court is bound by the construction placed upon the statutes by the Supreme Court of Florida even if there is involved a substantial Federal question under Section 10 of Article 1 of the Constitution of the United States as to the alleged impairment of the obligation of plaintiffs' contract.

7. In holding itself bound by the State Court construction as to the relation and duties, in matters pertaining to the payment of taxes, of the Trustees of the Internal Improvement Fund, in respect of lands in Everglades Drain-

age District bid off and certified to the Trustees at tax sales for defaulted taxes.

8. In holding in effect that the Everglades statutes of the years 1929, 1931 and 1937 of the State of Florida, by reducing the acreage taxes levied and pledged for the payment of the bonds of the District below the rates fixed by the statutes of the years 1923 and of 1925, did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

9. In holding in effect that the Everglades statutes of the years 1931 and of 1937 of the State of Florida, by diverting and appropriating a portion of the proceeds of acreage taxes to purposes other than the payment of the bonds then in default did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

10. In holding in effect that the Everglades statutes of the years 1931 and of 1937 of the State of Florida, by making bonds and interest coupons instead of cash receivable in redemption of tax sale certificates, did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

11. In holding in effect that the Everglades statute of the years 1931 and of 1937 of the State of Florida by authorizing the Board of Commissioners of Everglades Drainage District to cancel without payment certain acreage tax sale certificates did not impair the obligation of the contract between plaintiffs as holders of bonds of Everglades Drainage District and the Board of Commissioners of said District.

ARGUMENT

I. The decree of the District Court granting the motion of the defendants, appellees, to dismiss the bill of complaint and supplemental bills on the ground as held by the District Court that they do not state a cause of action in equity is erroneous in that the bill of complaint and supplemental bills allege the facts constituting the contract between plaintiffs as bondholders of Everglades Drainage District and the Board of Commissioners of said District, and allege the impairment of the obligation of said contract by statutes of the State of Florida enacted after the said bonds were issued and outstanding and allege the taking of plaintiffs' property without due process of law. The bill of complaint and supplemental bills do allege facts which constitute a cause of action in equity.

1. The subsequently enacted statutes of 1929, 1931 and 1937 impair the obligation of plaintiffs' contract in that at a time when plaintiffs' bonds and coupons were matured, unpaid and in default, they reduce substantially and below the amount necessary to pay the matured bonds and coupons and bonds and coupons as they would thereafter mature the acreage taxes levied for their payment by the statutes which authorized the issue of the bonds and constitute part of the bond contract.

We here consider only the reduction by the subsequent statutes of the taxes levied for the payment of the bonds.

The motion to dismiss was not properly granted since the bill of complaint and supplemental bills state in this

respect a cause of action in equity. On the motion to dismiss, the truth of the allegations of the bill and supplemental bills is admitted. The determination whether a cause of action is stated is dependent upon the allegations of the bill and supplemental bills and upon the proper interpretation of the statutes involved. *Polk Company* v. *Glover*, 83 L. Ed. (Advance sheets) 73. On the question whether the obligation of the bond contract was impaired through the reduction by the subsequent statutes of the amount of the acreage taxes levied for payment of the bonds by the statutes which constitute part of the bond contract, it is necessary only to determine whether the levy of such acreage taxes was part of the bond contract and whether the taxes were reduced substantially by subsequent legislation at a time when they were required for the payment of the matured principal and interest of the bonds. The bill and supplemental bills contain allegations both that the acreage taxes levied by particular statutes which authorized the issue of the bonds were part of the bond contract (R. 16-17) and that such acreage taxes were substantially reduced by subsequent statutes (R. 31-33, 58-60, 216-218) (Chapter 13,633, Laws of Florida, 1929, Chapter 14,717, Laws of Florida, 1931, and Chapter 17,902, Laws of Florida, 1937), at a time when payment of principal and interest of bonds was in default, and these allegations are supported by the provisions of the statutes (R. 11-12, 215).

Both the District Court herein in its opinion on the former motion and the Supreme Court of the State of Florida, have decided that the subsequent statutes impair the obligation of the bond contract by reducing the amount of the acreage taxes. The Supreme Court of Florida in a series of opinions filed in the case of *State ex rel. Sherrill*

and Vann v. *Milam, et al.*, 113 Fla. 491, 559, 587, 153 So. 100, 125, 136, has held that the statute of the State of Florida enacted in the year 1925 (Chapter 10,026, Laws of Florida of 1925) levied for payment of the bonds acreage taxes on lands within Everglades Drainage District at rates specified in the statute for the years during which bonds of the District should be outstanding and that such statute and such taxes constituted a part of the contract between the Board of Commissioners of Everglades Drainage District and the holders of the bonds of that District; and that the statute of the State of Florida enacted in the year 1931 (Chapter 14,717, Laws of Florida of 1931) substantially reduced the amount of acreage taxes levied by the statute of 1925 for payment of the bonds and thereby impaired the obligation of the bond contract. The District Court herein had reached the same conclusion supported by an elaborate opinion, *Rorick* v. *Board of Commissioners*, 57 Fed. 2d 1048, except that the District Court had held that the statute enacted in the year 1923 (Chapter 9119, Laws of Florida of 1923) and not the statute enacted in 1925 was part of the bond contract. The amount of the taxes levied by the statute of 1925 is greater than the amount levied by the statute of 1923, but for the present purpose this is immaterial since the subsequent statutes of 1929, 1931 and 1937 reduced substantially the amount of taxes levied under each of the statutes of 1923 and 1925.

The decisions by the Supreme Court of Florida in *State ex rel. Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, 559, 587, were rendered after the enactment of the 1931 statute and before the passage of the 1937 statute. In the *Sherrill* case bondholder relators sought a peremptory writ of mandamus directing the Board of Commissioners of Ever-

glades Drainage District to prepare a tax list for the year 1932 which would include the tax rates prescribed in the statute constituting part of the bond contract and not the tax rates included in the 1931 statute, and directing the tax assessors to receive such tax lists, to enter such taxes on their tax rolls and to deliver the tax rolls to the tax collectors in order that they might collect the acreage taxes therein prescribed. The first opinion was filed when the court denied a motion of the respondent Board of Commissioners to have the alternative writ of mandamus quashed; the second opinion was filed when the court sustained the relators' demurrer to an answer and return thereafter filed by the respondents; the third opinion was filed when the court granted the motion of the relators to amend the writ of mandamus because through lapse of time there was difficulty in placing the taxes on the tax rolls for the year named in the alternative writ.

In the last opinion filed in *State ex rel. Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, 587, the Florida Supreme Court, after stating (p. 590):

> "Inasmuch as all of the questions of law raised in the proceedings by the respective parties have already been determined in favor of the relators",

ordered that a peremptory writ of mandamus issue directed to the members of the Board of Commissioners of Everglades Drainage District commanding them to meet forthwith and to make up the list of lands subject to drainage tax "designating upon such list or lists the amount of taxes assessed against each parcel of land for the year 1932 under the provisions of Chapter 10026, Laws of Florida, 1925." The court further ordered that the writ be directed to the respondent tax assessors commanding

each of them to receive said tax lists and to enter upon his tax roll for the year 1934 "the tax levied and assessed for the year 1932 in the list forwarded him by the Board of Commissioners of Everglades Drainage District under this peremptory writ." The Court further directed the assessors to deliver the tax rolls so prepared to the tax collectors. The court said (p. 589):

> "We have already held in the opinion filed herein on April 7, 1933, that the relators timely asserted their legal rights to have the drainage tax for the year 1932, at the rate fixed by chapter 10026, Laws of Florida, 1925, levied, assessed and entered on the tax rolls of the several counties under the provisions of 1167, Revised General Statutes."

In its second opinion in *State of Florida ex rel. Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, 559, the Court stated (p. 560):

> "* * * Our holding as to the constitutionality of the statutes and our construction of the statutes in the opinion rendered on the motion to quash the alternative writ of mandamus have therefore become and are the law of the case regarding these matters."

In its first opinion, reported in 113 Fla. 491, the Court said (p. 518):

> "Furthermore, the provisions of the several statutes and the amendments thereto regarding the issuance of the Everglades Drainage District bonds, and the levying, assessing and collection of the acreage tax for drainage, and also for the application of the proceeds thereof to the payment of interest and the creation of a sinking fund for the payment of principal when due, in effect at the time of the issuance of the refunding bonds held by relators, became a part of the contract between the Board and such refunding Bondholders."

After stating that the respondents contended that the Act of 1931 provided the tax rate applicable under the relators' contract with the Board of Commissioners, the court in the foregoing opinion said (p. 522):

> "We consider this contention untenable, for the following reasons. Chapter 14717 Laws of Florida, Acts of 1931, was enacted long after the issuance and the sale of the bonds held by the relators."

After quoting section 1183 of the Florida Revised Statutes of 1920 (being Sec. 24 of Chapter 6456, Laws of Florida of 1913), which appropriated the proceeds of the drainage taxes for the payment of the bonds, the court in its first opinion in the *Sherrill* case made the following statement (p. 524):

> "The above quoted provisions of Section 1183, as also the acreage tax provided for on July 1, 1925, entered into and, under the provisions of Section 1182, Revised General Statutes, became a part of the 'irrepealable contract, between the Board of Commissioners and Everglades Drainage District, with the relators as holders of the refunding bonds and coupons thereof issued by virtue of Chapter 10027, *supra*, on July 1, 1925. • • •
>
> "In our discussion of the provisions of Chapter 14717, Laws of Florida, Acts of 1931, we have already observed that the acreage tax levied under such provisions is less than that fixed in Chapter 10026, Laws of Florida, Acts of 1925, and furthermore that the division and appropriation of such drainage tax, made in Chapter 14717, Laws of Florida, are contrary to the provisions made for the appropriation of such drainage tax money, for the retirement of bonds found in Sections 1165 and 1183, Revised General Statutes of Florida. We also call attention to the fact that the rate of certain of the acreage tax provided for in Chapter 1417,

Acts of 1931, is left to the discretion of the Board of Commissioners." (p. 525)

"The acreage tax authorized and levied under the provisions of Chapter 10026, Laws of Florida, Acts of 1925, and which was in force on July 1, 1925, when the refunding bonds were issued, is the acreage tax which the relators as holders of such refunding bonds are entitled to have assessed and collected, and the necessary portion of the proceeds applied toward the payment of the interest on, and retirement of the principal of such bonds." (p. 541)

The federal district court herein, in its opinion rendered on the former motion for interlocutory injunction, had already reached the conclusion that the reduction of the acreage taxes by the subsequent legislation of 1929 and 1931 impaired the obligation of plaintiffs' bond contract.

In view of these decisions, both by the state court in the Sherrill case and by the federal district court herein on the former motion, it is difficult to understand the basis for the district court's decision dismissing the bill and the supplemental bills on the present motion of defendants (24 Fed. Supp. 458, 459). The district court in its opinion explains the matter as follows:

"From an examination of the cases of Martin *v.* Dade Muck Land Company, 95 Fla. 530, 116 So. 449; State *ex rel.* Sherrill *v.* Milam, *et al.*, 113 Fla. 491, 153 So. 100, 125, 136; State *ex rel.* Board of Commissioners of Everglades Drainage District *v.* Sholtz, 112 Fla. 756, 150 So. 878; Everglades Drainage District *et al.* *v.* Florida Ranch & Dairy Corporation, 5 Cir., 74 F. 2d, 914, it appears that the Supreme Court of Florida has passed upon the questions presented to this court adverse to plaintiff, and notwithstanding the decision in the Rorick Case, Rorick *v.* Board of Com'rs, 57 F. 2d, 1048, this court is bound by the construction placed

upon these statutes by the highest court of the state Erie Railroad Company *v.* Harry J. Tompkins, 58 S Ct. 817, 82 L. Ed. ___."

Before showing that the state court cases to which the district court referred do not support its conclusion, we state that the decision of the district court is in substance that taxes levied by a statute for payment of bonds and constituting part of the bond contract may be reduced substantially by subsequent statutes when the bonds are in default and the taxes are necessary for their payment without impairing the obligation of the bond contract. If this were accepted as the law, the impairment clause of the federal Constitution would in effect be eliminated.

The State court did not make such an error. In the foregoing quotation, the district court relies upon *State ex rel. Sherrill and Vann* v. *Milam, et al., supra,* as authority for its conclusion that the Florida Supreme Court had passed upon the questions presented to the federal district court in this case adversely to plaintiffs. From the examination of the case of *Sherrill and Vann* v. *Milam, et al., supra,* it is clear that the foregoing statement of the federal district court is erroneous. The court also relies upon two other state court decisions: *Martin* v. *Dade Muck Land Co.,* 95 Fla. 530, and *State ex rel. Board of Commissioners of Everglades Drainage District* v. *Sholtz,* 112 Fla. 756. In neither of these cases did the court even consider the question whether a subsequent statute which admittedly reduces substantially taxes levied for the payment of bonds and constituting part of the bond contract, impairs the obligation of the contract. The *Sherrill* case is the most recent of these state court cases cited by the district court and is diametrically opposed to the decision of the district court herein.

The only other case relied upon by the district court herein is *Everglades Drainage District, et al.* v. *Florida Ranch & Dairy Corporation*, 74 Fed. 2d 914 (C. C. A. 5). In this case, in the year 1934, a suit in equity was brought by an owner of lands in Everglades Drainage District and bonds of the District to enjoin the Board of Commissioners from transmitting to the tax assessors, tax lists for the years 1932, 1933 and 1934 at the rates of taxation prescribed by Chapter 10026, Acts of 1925 on the ground that that statute impaired the obligation of plaintiff's contract because it levied higher taxes upon plaintiff's land than the Act of 1923, and because the taxes levied in the 1925 Act were reduced on certain lands in the district, although the amount of taxes as a whole was increased under the 1925 Act over the amount levied in the 1923 Act. The plaintiff's bonds were issued under the 1923 Act. The bill prayed for an interlocutory injunction as well as a permanent injunction, and both were granted by the district court.

On appeal to the Circuit Court of Appeals, that court held that the plaintiff had an adequate remedy at law, and reversed the decree of the district court. In holding that the plaintiff, as a bondholder, could not complain of the impairment of the obligation of its contract by the enactment of the statute of 1925, the court said (p. 917):

> "* * * Nor in our opinion has plaintiff in its capacity of bondholder shown any violation of the contract clause of the Federal Constitution by reason of the fact that the 1925 act increased the taxes on the 2,000,000 acres of land in the Everglades proper, which it appears have and will receive the greatest benefit from the drainage operations. * * *
>
> "But in our opinion plaintiff has the right to show if it can that the reduction of taxes in the largest zone containing 2,000,000 acres, upon which the taxes have

> been decreased some $85,000 per annum by the act of 1925, impairs the obligation of its contract as a bondholder."

The Circuit Court of Appeals in its opinion also stated (p. 917):

> "On the merits we are confronted at the outset with the decision of the Supreme Court of Florida in the *Sherrill-Milam* case. The relators in that case were refunding bondholders, but the decision would doubtless have been the same if they had been original bondholders, since only one levy is provided for and it applies to all bondholders alike. The court held that chapter 10026, Acts of 1925, and not chapter 9119, Acts of 1923, was controlling in the fixing of values and rates of taxation. It therefore in effect rejected the construction placed on these two statutes by a three-judge court in the case of Rorick *v.* Board of Com'rs of Everglades Drainage District (D. C.) 57 F. (2d) 1048. Notwithstanding the decision in the *Rorick* case, the federal District Court and this court are bound by the construction placed upon these statutes by the highest court of the state."

The court thus stated that it regarded the 1925 statute as part of the bond contract as the state court had done in the *Sherrill* case. On no possible theory, therefore, can the Florida Ranch and Dairy case be regarded as sustaining the doctrine that by a subsequent statute, the taxes levied by the statute which is part of the bond contract may be reduced substantially when they are necessary to pay the bonds which are in default. If the district court herein had regarded the Florida Supreme Court decision in the *Sherrill* case as binding upon it, as the Circuit Court of Appeals in the Florida Ranch and Dairy case stated that it should, it would not have dismissed the bill and supple-

mental bills, but would have denied the motion of defendants herein to dismiss upon the ground that the state court had already decided that the 1931 statute impaired the obligation of plaintiffs' bond contract. The 1937 statute reduces the total amount of the acreage taxes even below the amount levied in the 1931 statute (R. 216-217). Therefore on the authority of the *Sherrill* case the district court in the present case should have held that the 1937 statute also impaired the obligation of plaintiffs' bond contract.

If the doctrine of *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64, referred to in the district court opinion herein, is applicable to the present case which involves a federal question, the effect is to make the decision of the Florida Supreme Court in the case of *Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, binding on the district court herein, and to require the district court to deny the motion of defendants to dismiss the bill and supplemental bills. The same result follows if the doctrine of the *Erie Railroad* case is not applicable, since both the federal district court herein on the former motion and the state court have decided that the statutes of 1931 and 1937 do impair the obligation of the plaintiffs' bond contract by reducing the amount of taxes levied for the payment of the bonds. No question of interpretation of the statutes is involved in the consideration of this question as it is alleged by the plaintiffs' pleadings and admitted by defendants' motions to dismiss both that the statute levying the taxes and the taxes are part of the bond contract and that the subsequent statutes reduce these taxes substantially at a time when the bonds are in default and the taxes are necessary for their payment. The district court herein departed in its present decision from its decision on the former motion solely upon its mistaken statement that its former decision

was in conflict with the decisions of the state court. The Florida Supreme Court has not passed upon the constitutional validity of the 1937 statute (Chapter 17,902, Laws of Florida of 1937), nor interpreted that statute, but since that statute reduces the amount of acreage taxes which are part of plaintiffs' bond contract to a greater extent than the statute of 1931, and as the 1937 statute was enacted by the legislature upon the application of the Board of Commissioners of Everglades Drainage District after the decision of the Florida Supreme Court in *Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, and after the decision of the federal court herein, in *Rorick* v. *Board of Commissioners*, 57 Fed. 2d 1048, the statute of 1937 is obviously unconstitutional on the ground that it impairs the obligation of plaintiffs' bond contract.

Even without the aid of the foregoing decisions it is clear that the subsequent statutes impair the obligation of the plaintiffs' bond contract by admittedly reducing the amount of acreage taxes constituting part of the bond contract at a time when the bonds are in default and the taxes are necessary for the payment of the bonds:

United States ex rel. Von Hoffman v. *City of Quincy*, 4 Wall. 535;

Wolff v. *New Orleans*, 103 U. S. 358;

Mobile v. *Watson*, 116 U. S. 289;

Louisiana v. *New Orleans*, 215 U. S. 170;

Nelson v. *St. Martin's Parish*, 111 U. S. 716;

Galena v. *Amy*, 5 Wall. 705;

Louisiana v. *Pillsbury*, 105 U. S. 278;

Board of Liquidation v. *McComb*, 92 U. S. 531;

Ralls County Court v. *United States*, 105 U. S. 733;

Columbia County v. *King*, 13 Fla. 451;

Graham v. *Folsom*, 200 U. S. 248;
Sherrill and Vann v. *Milam, et al.*, 113 Fla. 491, 153 So. 100;
Boatright v. *Jacksonville*, 117 Fla. 477, 158 So. 42;
State ex rel. Sovereign Camp v. *Boring*, 121 Fla. 781, 164 So. 859.

2. The subsequently enacted statutes of 1929, 1931 and 1937 impair the obligation of the plaintiffs' contract by diverting to other purposes without any substitute and without the consent of bondholders a substantial part of the taxes levied for the payment of the bonds and expressly appropriated and set aside for that purpose by the statute which was part of the bond contract, and necessary at the time of such diversion for the payment of the matured bonds and coupons and those maturing thereafter.

We here consider the diversion of the acreage taxes to purposes other than the payment of the bonds. The statutes which authorized the issue of the outstanding bonds of this District levied the acreage taxes for the payment of the bonds (Chapter 6456, Laws of Florida of 1913, Secs. 5, 6 as amended; R. G. S. 1164, 1165 as amended (R. 17)); appropriated and set aside the proceeds of the acreage taxes in the hands of a separate custodian for the payment of the bonds (Chapter 6456, Laws of Florida of 1913, Sec. 24; R. G. S. Sec. 1183 (R. 18)); and contained a condition that after the issue of the bonds first authorized to be issued no additional bonds should be authorized to be issued unless such authority was accompanied by the levy of additional acreage taxes sufficient (R. 16-17) to meet the requirements of the bonds (Chapter 6456, Laws of Florida of 1913, Sec. 19 as amended by Chapter 6957 of 1915 and Chapter 7862 of 1919; R. G. S. Sec. 1178 as amended). The foregoing provisions of the statute are part of the bond contract,

Von Hoffman v. *Quincy*, 4 Wall. 535; *Board of Liquidation* v. *McComb*, 92 U. S. 531; *Louisiana* v. *Pillsbury*, 105 U. S. 278; *Wolff* v. *New Orleans*, 103 U. S. 358. By these requirements of the statute the taxes themselves and the proceeds thereof are required to be applied exclusively to the payment of the bonds so far as necessary. As additional bonds were authorized by the statute to be issued, additional taxes were levied sufficient to meet the requirements of the bonds (R. 16).

The acreage taxes and their proceeds can be effectively set aside and appropriated exclusively for the payment of the bonds only if the legislature has the power to make such provision in the statute and if in the statute that purpose is effectively expressed by the use of appropriate language. In such a tax district created by the legislature (*Lainhart* v. *Catts*, 73 Fla. 735) primarily for the purpose of making improvements therein out of the proceeds of bonds of the District authorized by the statute to be issued and sold to the public, the legislature had ample power to levy the acreage taxes and to require that these taxes be applied exclusively to the payment of the bonds. *Von Hoffman* v. *City of Quincy*, 4 Wall. 535; *Village of Kent* v. *United States*, 113 Fed. 232 (C. C. A. 6); *Rorick* v. *Board of Commissioners*, 57 Fed. 1048; *Duval Cattle Co.* v. *Hemphill*, 41 Fed. 2d 433 (C. C. A. 5); *First State Savings Bank* v. *Little River Drainage District*, 122 Fla. 304, 165 So. 48; *Keefe* v. *Adams*, 106 Fla. 733, 143 So. 644; *Sherrill and Vann* v. *Milam, et al.*, 113 Fla. 491, 153 So. 100; *Lawler* v. *Knott*, 129 Fla. 136, 176 So. 113, 130 Fla. 424, 178 So. 420; *Yonge* v. *Franklin*, 184 So. 237 (Advance Sheets, Fla.); *Martin* v. *Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449; *State* v. *Harris*, 119 Fla. 375, 161 So. 374. The state court had on numerous occasions approved the arrange-

ment for the issue of these bonds: *Bannerman* v. *Catts*, 80 Fla. 170, 85 So. 336; *Lainhart* v. *Catts*, 73 Fla. 735, 75 So. 47; *Everglades Sugar and Land Co.* v. *Bryan*, 81 Fla. 75, 87 So. 68; *Berry* v. *Hardee*, 83 Fla. 531, 91 So. 685; *Richardson* v. *Hardee*, 85 Fla. 510, 96 So. 290.

The intention of the legislature to apply the acreage taxes exclusively to the payment of the bonds is effectively expressed in the statutes which authorized the issue of the bonds and levied the taxes. The statutory arrangement in respect of the requirement that the acreage taxes be applied to the payment of the bonds is as follows: First, the statute (Chapter 6456, Laws of Florida of 1913 as amended, R. G. S. Secs. 1160-1188) states the purpose of forming the district and describes the lands included therein (Sec. 1; R. G. S. Sec. 1160); secondly, the statute creates the Board of Commissioners of the District and defines its powers (Secs. 2-4; R. G. S. Secs. 1161-3); next the statute levies the annual acreage taxes (Sec. 5; R. G. S. Sec. 1164); following this, the statute states in general the use which may be made of the proceeds of the taxes (Sec. 6; R. G. S. Sec. 1165); there then follow various provisions of the statute in respect of the placing of the acreage taxes on the tax rolls, the collection thereof, the sale of the lands at public auction for failure to pay the taxes, and similar matters (Secs. 7-18; R. G. S. Secs. 1166-1177). The statute then authorizes the issue of bonds of the District (Sec. 19; R. G. S. Sec. 1178). The original 1913 Everglades Statute authorized a limited amount of bonds to be issued, which amount was thereafter increased from time to time by amendments made to the statute (R. 16). The statute (Sec. 19; R. G. S. Sec. 1178) contains a limitation that the authority to issue additional bonds must be accompanied by the levy and imposition of additional

taxes sufficient to meet the payment of the bonds and interest thereon as the same should fall due, such payments to be provided for by a sinking fund, and such additional bonds to constitute an obligation of equal dignity with the bonds theretofore authorized, and equally with the bonds theretofore authorized to be entitled to payment from all drainage taxes then or thereafter imposed upon the lands within said district without preference to any bonds over any other bonds (Chapter 6456, Laws of Florida of 1913, as amended; R. G. S. Sec. 1178). The legislature complied with the foregoing limitation by increasing the amount of taxes levied by each amendment which authorized the issue of additional bonds (R. 16). There is no provision in the statute requiring additional taxes to be levied for the payment of other expenses or indebtedness of the District as a condition to the issue of additional bonds.

Provision is then made in the statute for the execution of the bonds and related matters, including a requirement that the attorney general of the state shall examine the bonds and if as a result of such examination he finds that such bonds are issued in conformity with the constitution and with the statute, and that they are valid obligations of the Board of Commissioners and of the District he shall officially so certify upon the bonds in the form provided in the statute, and the statute directs that the bonds shall pledge the faith and credit of the Board of Commissioners of the District for the prompt payment of the principal and interest thereof (Secs. 20-21, 22; R. G. S. Secs. 1179-1180, 1181). The attorney-general did so certify all outstanding bonds (R. 13), and the bonds recite that the full faith, credit and resources of the Board are pledged for the punctual payment of the principal and interest of the bonds (R. 19, 45, 53). The statute then pro

vides (Sec. 23; R. G. S. Sec. 1182) that the provisions thereof shall constitute an irrepealable contract between the Board of Commissioners and Everglades Drainage District and the holders of the bonds and coupons issued pursuant to the provisions of the statute, and that any holder of any of said bonds or coupons either at law or in equity may enforce performance of the duties required by the statute of any of the officers or persons mentioned in the statute in relation to the said bonds or to the collection, enforcement and application of the taxes for the payment thereof.

There then follows in the statute the provision directly and specifically making the appropriation of the taxes for the payment of the bonds. The statute provides (Sec. 24; R. G. S. Sec. 1183) that it shall be the duty of the state treasurer as custodian of the funds belonging to the Board of Commissioners and to Everglades Drainage District, out of the proceeds of the taxes levied by the statute and out of any other money in his possession belonging to the Board of Commissioners or to Everglades Drainage District, "which moneys so far as necessary are hereby set apart and appropriated for the purpose" to apply said moneys and to pay the interest upon said bonds as the same shall fall due and at the maturity of said bonds out of the said moneys to pay the principal thereof, and there is created a sinking fund for the payment of the principal of the bonds, "and the said board shall set apart and pay into such sinking fund annually out of the taxes levied and imposed by this article, and the other revenue and funds of said District at least two per cent of the amount of bonds outstanding. The said sinking fund for the payment of said bonds shall not be appropriated to any other purpose than herein specified." The statute then pro-

vides (Sec. 25; R. G. S. Sec. 1184) that the state treasurer shall be custodian of all funds belonging to said district, and such funds shall be disbursed only in the manner therein designated. In the section of the statute appropriating the proceeds of the taxes for the payment of the bonds, there is no provision made that such proceeds may be applied to any other purpose whatever, and in no other part of the statute is there any specific appropriation of the proceeds of the taxes for any purpose other than the payment of the bonds.

Not only do the Everglades statutes contain an express appropriation and setting aside of the acreage taxes in the hands of a separate custodian for the payment of the bonds, which is in itself an effective and mandatory provision for the application of such taxes exclusively to the payment of the bonds, but the taxes are levied by the statute for the specific purpose of paying the bonds, and there is contained in the statute the requirement that when additional bonds are authorized, additional acreage taxes shall be levied sufficient to meet their payment. The purpose of levying the acreage taxes for the payment of the bonds, of appropriating them for that purpose, and of requiring the levy of additional taxes sufficient to meet the payment of additional bonds authorized to be issued, is to insure as far as possible the payment of the bonds, first by levying the necessary amount of taxes and secondly by requiring the taxes and their proceeds to be applied exclusively, so far as necessary, to the payment of the bonds.

On the former motion the district court herein held (*Rorick v. Board of Commissioners*, 57 Fed. 2d 1048) that the acreage taxes could not be diverted by the 1931 statute

to purposes other than payment of the bonds when the taxes were necessary for that purpose, and said (p. 1056):

> "We hold, therefore, that the provisions of chapter 6456, Acts 1913, and its several amendments pursuant to which plaintiffs' bonds were issued and acreage taxes to pay the same were levied, constitute a contract between plaintiffs and the district; that the legislation imposing acreage taxes to pay those bonds and interest, which was in effect when the bonds were issued, cannot be withdrawn, nor can the proceeds of such taxes be diverted to other purposes, so long as such proceeds are necessary to pay interest and create a sinking fund as prescribed by section 24 of chapter 6456, now section 1560, Comp. Gen. Laws 1927, and the several resolutions of the board, all of which are parts of the bond contract. We further hold that the proceeds of the acreage taxes and other funds of the district (except the ad valorem tax under the act of 1921) are specifically appropriated (Lainhart *v.* Catts, 73 Fla. 735, 75 So. 47, text 54; Bannerman *v.* Catts, 80 Fla. 170, 85 So. 336; State *v.* Allen, 83 Fla. 214, 91 So. 104, text 105, 26 A. L. R. 735), and pledged to the extent and for the purposes just mentioned; the appropriation and pledge continuing so long as these funds are necessary to meet the requirements of the bonds issued pursuant thereto. It is the duty of the state treasurer and of the board of commissioners to devote said funds to the purposes named, as far as may be necessary, before using any part thereof for any other purpose.
>
> "If, as urged by the board, it would by this holding be left without adequate operating or maintenance revenue, the situation may be met by further exertion of the taxing power to provide the same." (R. 96)

In this holding, there was no dissent.

On the present motion the district court departed from its former decision only, as we understand, because they

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erroneously concluded that the Supreme Court of Florida had since the district court's former determination decided this question adversely to the bondholders.

District Judge CLAYTON in considering this question in *Rorick* v. *Board of Commissioners*, 27 Fed. 2d 377, had said that the Everglades statutes "by various carefully worded provisions trying to protect the payment of the bonds issued thereunder, clearly and even *ex industria* pledged all tax funds" for the payment of the bonds and the interest thereon.

In numerous cases it has been held that taxes may be effectively appropriated and set aside exclusively for the payment of bonds.

New Orleans v. *Fisher*, 180 U. S. 185;
Seibert v. *Lewis*, 122 U. S. 284;
Mobile v. *Watson*, 116 U. S. 289;
Louisiana v. *Pillsbury*, 105 U. S. 278;
Louisiana v. *Jumel*, 107 U. S. 711;
Jewell v. *City of Superior*, 135 Fed. 19 (C. C. A. 7);
Hayden v. *Douglass County*, 170 Fed. 24 (C. C. A. 7);
Smith v. *Boise*, 18 Fed. Sup. 385;
Hubbell v. *Leonard*, 6 Fed. Sup. 145;
City of Jacksonville v. *Bankers Life Co.*, 90 Fed. 2d 141 (C. C. A. 7);
Miller v. *Hamilton*, 233 Fed. 402 (C. C. A. 8);
Moore v. *Otis*, 275 Fed. 747 (C. C. A. 8);
Keefe v. *Adams*, 106 Fla. 733, 143 So. 644.

In view of the fact that the District Court herein has in effect by its decision on the present motion destroyed its decision on the prior motion on the ground as stated by it that it was in this respect purporting to follow decisions of the Supreme Court of Florida, it is necessary to examine the

decisions of that court, but before doing so, we call attention to the only contention which has been made by the defendants in respect of the appropriation of the taxes made by the Everglades statute, namely, that the appropriation does not prevent the use of the acreage taxes for the purpose of paying the expenses of operating the District. This contention is based on alleged necessity and on the provision contained in Section 6 of the statute which provides for the use generally of the proceeds of the acreage taxes (R. G. S. Sec. 1165).

The necessity of funds for operating expenses in this District is met by provision which the legislature made in 1921 (Chapter 8412, Laws of Florida of 1921) by levying ad valorem taxes for such purpose (R. 35). In this tax district it is obviously for the legislature, not for the Board of Commissioners, to determine the amount of operating expenses and the sources from which they will be paid. The legislature has ample power to levy, when necessary, additional taxes for payment of operating expenses. Even if all of the acreage taxes are required to pay the bonds and coupons, and no part thereof is available for payment of operating expenses, this is not a practical difficulty which would control the construction of the statute. The legislature necessarily contemplated such a possibility when it appropriated the proceeds of the taxes for the payment of the bonds. The legislature increased the expenses of operating the District by statutes enacted subsequently to the issue of the bonds, which substituted for the state officials as members of the Board of Commissioners, who acted *ex officio* and without salaries, private individuals with salaries (R. 58, 214). Under such changed conditions, if the funds available for payment of operating expenses were not sufficient, it was the duty of the Board of Commissioners

who presented and recommended the enactment of the statute increasing the expenses to request the legislature to make provision therefor, and of the legislature to take this matter under consideration in increasing the expenses of the District. If the Board of Commissioners may use such part of the acreage taxes as they see fit for operating expenses, there would in substance be no appropriation of the acreage taxes for the bonds. It has been held that such necessity as is urged here is no basis on which to divert taxes appropriated for given purposes.

Galena v. *Amy*, 5 Wall. 705;

Village of Kent v. *United States*, 113 Fed. 232 (C. C. A. 6);

State ex rel. Keefe v. *Cotton*, 106 Fla. 733, 143 So. 644;

Bates v. *Porter*, 74 Cal. 224.

In *Lainhart v. Catts*, 73 Fla. 735, at 748, 75 So. 47, the court, after referring to the fact that the taxes upon the lands are fixed, determined and imposed directly by the legislature and are not referred to the judgment of any Board or body to be ascertained and determined, said in respect of the nature of these taxes:

> "Such assessment or charges are, as stated in the Acts, to provide means to accomplish the purposes set out in these Acts and is a peculiar species of taxation distinct from the general burden imposed for State, county and municipal purposes, in that it is a local or special charge placed upon the land, situated in the Drainage District to pay for public improvements proposed to be made therein, on the theory that such property thereby derives a special benefit, and therefore such charges constitute a special assessment * * *."

In the Everglades statute provision is made (sec. 6, R. G. S. Sec. 1165) for the application of the proceeds of the acreage taxes to the general purposes provided in that section, including the payment of bonds. The contention has been made by the Board of Commissioners that this section of the statute determines ultimately and finally the only purposes to which the taxes may be applied, and that the subsequent provisions of the statute authorizing the issue of bonds and providing that in the event bonds are issued, the acreage taxes shall be appropriated and set aside exclusively for the payment of bonds, are not effective because they are in conflict with section 6 in the earlier part of the statute which provides the general purposes for which the taxes may be used. This contention is in effect that with the provisions of section 6 in the statute, no effective authority could be given in the subsequent part of the statute for the issue of bonds by the appropriation of the taxes exclusively for their payment, and that section 6 makes it imperative that bonds could be authorized to be issued under the statute to be paid out of acreage taxes only in the manner provided in section 6, that is, after the payment of operating and various other expenses of the District.

Section 6 merely provides the power which the Board of Commissioners have to disburse the proceeds of the acreage taxes in the absence of any more specific and definite provision in the statute. The legislature, after inserting section 6 in the statute, then made provision for the issue of bonds and for securing the payment thereof, by authorizing the issue of bonds and by providing further, in the event bonds are issued, that the acreage taxes are appropriated and set aside exclusively for their payment so far as necessary. If no bonds are issued, section 6 provides the authority for the disbursement of the acreage

taxes, but upon the issue of bonds the acreage taxes are appropriated exclusively for their payment so far as necessary, and section 6 of the statute would then apply solely to any excess taxes not required for payment of the bonds. The principle of law is that in the construction of a statute the particular provision controls the general, *D. Ginsburg & Son* v. *Popkin*, 285 U. S. 204; *United States* v. *Chase*, 135 U. S. 255, but it is not necessary to rely upon such a principle of construction in the present case because the statute clearly defines the conditions under which bonds of the district may be issued, one of which is that the acreage taxes shall be appropriated exclusively, so far as necessary, for the payment of the bonds, and nothing contained in section 6 is in conflict with this provision.

There are no decisions of the Supreme Court of Florida either in respect of Everglades Drainage District or in other matters which, if followed by the district court herein, would require it in deciding the present motion to reach a conclusion in opposition to its decision on the former motion herein. In *Boatright* v. *City of Jacksonville*, 117 Fla. 477, 158 So. 42, 46, the court said in another matter:

> "In the case of City of Clearwater *v.* State, *ex rel.* United Mutual Life Ins. Co., 108 Fla. 623, 147 So. 459, 460, this court said:
>
> 'Where bonds have been issued by a municipality, with a provision for the levy of stipulated taxes to provide for their payment, the fund contracted to be raised by the agreed taxes is the foundation upon which the bonds themselves rest. The annual tax is the security offered to the creditors who take bonds under laws which constitute a special agreement on the part of the public corporation debtor to provide for their payment according to terms. And as the Supreme Court of the United States has said in the

case of Louisiana *v.* Pillsbury, 105 U. S. 278, 288, 26 L. Ed. 1090; "The annual tax * * * could not be afterwards severed from the contract without violating its stipulations, any more than a mortgage executed as security for a note given for a loan could be subsequently repudiated as forming no part of the transaction.' "

In *First State Bank* v. *Little River Drainage District*, 122 Fla. 304, 165 So. 48, the court said (p. 306):

"Therefore all funds on hand (the term 'funds' here used being employed in the sense of tax liens capable of being realized upon and converted into cash as well as cash itself after realization) are equitable assets of the drainage district held by the Supervisors thereof under a special statutory trust created for the particular security and benefit of the district's creditors. Accordingly the district supervisors, as statutory trustees, are without authority to discharge, satisfy, liquidate or release any of the equitable assets held by them as security for the payment of the district's bonds, except in accordance with the terms of law under which such assets were originally provided to be collected and held, any subsequently passed statutes providing to the contrary being incapable of being given judicial effect for that purpose as against a complaint in equity duly asserted against the same by one alleging himself to be a creditor of the district and prejudiced thereby. See: Duval County *v.* Jennings, 121 Fla. 584, 164 Sou. Rep. 356."

In *Keefe* v. *Adams and State, ex rel., Keefe* v. *Cotton*, 106 Fla. 733, 143 So. 644, the court said (p. 740):

"But it is contended by appellees that the transfer of the funds from 'interest on bonds' to general operating expenses was essential in order to enable them to carry on the normal governmental functions of the city

and that to invalidate such transfer would deprive the city of its means to protect property, maintain order, ward off disease, and perform other duties devolving on it.

"This contention was answered fully in Chamberlain *vs.* City of Tampa, *supra,* where the Court held that while such critical periods will often occur in corporate as well as individual affairs whenever necessary expenditures exceed possible incomes, but they can furnish no excuse for a municipal corporation to divert its revenues from their legitimate purpose to another not authorized by law, however beneficial or meritorious. Harrell *vs.* Woodberry and Hyde *vs.* Melson, *supra;* County Commissioners of Columbia Co. *vs.* King, 13 Fla. 451; Klemm *vs.* Davenport, 100 Fla. 627, 129 So. 904; State *ex rel.* Dos Amigos, Inc. *vs,* Lehman, 100 Fla. 1313."

The Supreme Court of Florida has determined that the proceeds of the acreage taxes appropriated by the Everglades statutes for the payment of the bonds constitute trust funds for the payment of all the bonds of the District. In *State ex rel. Lawler* v. *Knott,* 129 Fla. 136, 176 So. 113, 130 Fla. 424, 178 So. 420, a holder of overdue bonds of Everglades Drainage District sought through a mandamus proceeding to have his bonds paid in full out of the proceeds of the acreage taxes which were then in the hands of the State Treasurer as custodian of the funds of the District; the court denied him relief on the ground that bonds of the District, other than the bonds of the relator, in large amounts were due and unpaid and the proceeds of the acreage taxes in the hands of the custodian were not sufficient to pay all matured bonds in full.

After the court in the *Lawler* case had granted a motion to quash the alternative writ, had denied a motion

for peremptory writ notwithstanding the return, and had denied petition of relators for rehearing, the parties in that case entered into a stipulation (130 Fla. 424, 427) in which they asked the court to issue the peremptory writ of mandamus which it had theretofore refused to issue; and the court "inadvertently" (130 Fla. 424, 433) complied with that request. No bondholder was a party to that mandamus proceeding except the relator whose bonds the peremptory writ, granted pursuant to such stipulation, directed to be paid in full out of the funds in the hands of the custodian which were not sufficient to pay all matured bonds. After the issuance of the peremptory writ the attorney for plaintiffs in the present action filed a petition in the *Lawler* case in the Florida Supreme Court asking leave to intervene and that the court recall its peremptory writ or stay the execution thereof and for further relief. On this petition the court did not grant to petitioners a right to intervene since, under the state law, there is no right to intervene in a mandamus proceeding, but ordered that further execution of the peremptory writ be stayed until a hearing of the objections of the petitioners to the issue of the peremptory writ be had. Upon such hearing the court decided that although the judgment for peremptory writ was improvidently entered on the stipulation, it should stand because the status of the parties to the cause and other litigants had been changed by relying upon the order of the court (130 Fla. 424, 425, 435). In its opinion rendered in denying the petition of relator Lawler for rehearing of its order denying him a peremptory writ notwithstanding the return, the same court said:

> "The Constitution and statutes in force at the time of the issuance of the bonds in question enter into and are integral parts of the contract with the bondholders * * *." (129 Fla. 136, 144.)

"And the provisions of such contract for the benefit of the bondholders cannot be impaired nor withdrawn so long as their bonds are unpaid. * * * also, the State Treasurer, as custodian of said fund, was charged with the duty of applying the proceeds of said taxes and any other moneys belonging to said Board or District, which moneys are appropriated for the purpose, to pay interest on said bonds * * * and the Board was required to set apart and to pay into said sinking fund annually out of the taxes levied and other revenue, at least two per cent of the amount of bonds outstanding, and it was provided that said sinking fund should not be appropriated to any other purpose." (129 Fla. 136, 146.)

In *State ex rel. Yonge* v. *Franklin*, 184 So. 237 (Advance sheets, Florida, 1938), an attorney who had rendered services for Everglades Drainage District, for which he had recovered a judgment, sought by mandamus to secure payment of his judgment out of the proceeds of acreage taxes appropriated in the hands of the custodian for the payment of the bonds, and his application was denied. In granting respondent's motion to quash the alternative writ, the Florida Supreme Court said:

"The relator's allegations and the statutes referred to therein and the insolvent condition of the fund, clearly show that the proceeds of tax collections from which the payments are commanded to be made are statutory funds which are expressly appropriated to the payment of the bonds issued and other authorized expenses incurred by the district; and while the statute contemplates the payment of all proper expenses in executing the purposes of the trust, yet there is no express appropriation to pay any class of such expenses; and being trust funds, payments therefrom not covered by commands of the statute are to be enforced by courts of equity and not by mandamus unless so provided by a valid statute."

In the foregoing statement the court referred both to the allegations of relator and to the provisions of the statutes. The court in any event states that the taxes are expressly appropriated for the payment of the bonds and constitute trust funds for that purpose and that no appropriation is made to pay any class of expenses.

The Florida Supreme Court, therefore, in the *Lawler* case, has held that a bondholder cannot secure payment of his bonds in full out of the proceeds of the acreage taxes when other bonds are in default and there are not sufficient proceeds of acreage taxes in the hands of the custodian to pay all bonds in full; it has held in the *Yonge* case that a creditor of the District, not a bondholder, cannot by mandamus secure payment of his claim out of the proceeds of the acreage taxes when the bonds are in default. There is no state court decision to the effect that a subsequent statute which diverts the proceeds of the acreage taxes from the payment of the bonds to the payment of expenses of the District is valid. The state court has held that the acreage taxes are appropriated for payment of bonds and constitute trust funds for that purpose. The state court has left to an equity court the determination on a proper application, of what, if any, payments may be made for other purposes out of the proceeds of the acreage taxes. Since the legislature had the power to appropriate the taxes for the payment of the bonds and had appropriated them for that purpose, an equity court would recognize and protect such appropriation. The equity court could not both recognize and protect the appropriation and at the same time permit the payment out of the appropriated taxes of other claims in priority to the payment of the bonds for to do so would be to give such other claims a prior right to payment out of the taxes notwithstanding the appropriation for the payment of the bonds, and would in ef-

fect be a holding that the appropriation was not valid. The subsequent statutes have arbitrarily and substantially reduced the taxes levied for the payment of the bonds, and have arbitrarily and substantially diverted the reduced taxes to purposes other than payment of the bonds, at a time when the bonds were due and unpaid and when the whole amount of the taxes constituting part of the bond contract and their proceeds were necessary for the payment of the bonds. These subsequent statutes did not purport to treat the taxes as trust funds for payment of the bonds, but as property in which the bondholders had no right and which could be arbitrarily diverted by the legislature to purposes other than the payment of the bonds.

The cases are to be distinguished where the appropriation is made not by the legislature but by an agent of the state such as a municipality under limited authority given by the legislature to levy taxes in limited amounts for all purposes. In *City of East St. Louis* v. *Zebley,* 110 U. S. 321 and in *Clay Co.* v. *United States,* 115 U. S. 616, the legislature had authorized its agent, the municipality or county to levy a limited tax for the payment of operating expenses and for all other purposes; it was held that a creditor could not compel the application of the proceeds of the taxes to the payment of his claims when such proceeds were necessary to pay current administration expenses. The cases hold that under such limited authority to levy taxes for all purposes the current administration expenses are the first claim against the taxes since the authority to levy limited taxes for all purposes necessarily involved the use of such taxes so far as necessary for the payment of the current administration expenses. The mandate of the legislature to the municipality is in substance that it shall live within its limited income and there is no basis for the implication that the legislature will enlarge the authority to

levy taxes in order to provide funds for the payment of current administration expenses. The present case is distinguishable from such cases in that the appropriation was made in our case, not by a municipality under limited authority to levy taxes for all purposes as in the *Zebley* case and the *Clay* case; the appropriation here is made by the legislature directly in the statute which authorizes the issue of the bonds, the levy of the taxes, and the appropriation of the taxes for the purpose of paying the bonds, so far as they are necessary for that purpose. These provisions were made by the legislature as an inducement to the purchase of the bonds of the District. Under such statutory authority if the appropriated taxes are wholly required for the payment of the bonds so that no portion thereof is available for payment of administration expenses, it is the manifest duty of the legislature which made the exclusive appropriation of the taxes for the payment of the bonds to make other provision for the payment of current administration expenses, which the legislature, in the present case, has done.

In the present case, there is also involved the question whether the legislature by appropriate words effectively exercised its power and actually appropriated the proceeds of the acreage taxes to the extent necessary for the payment of the bonds so as to preclude their use for other purposes at a time when they were necessary for payment of the bonds. The words used in the statute (Chapter 6456, Laws of Florida of 1913, Secs. 25, 24, 19, as amended; R. G. S. secs. 1184, 1183, 1178) are (a) that the taxes are levied for the payment of the bonds and that the state treasurer is the custodian, and it shall be his duty out of the proceeds of the taxes to pay the principal and interest of the bonds; (b) that such proceeds "so far as necessary are hereby set

apart and appropriated for the purpose"; (c) that a sinking fund is created for the payment of the principal of the bonds and that at least two per cent of the amount of the bonds outstanding shall be set apart and paid into such sinking fund annually out of the proceeds of such taxes; (d) the sinking fund shall not be appropriated to any other purpose than the payment of the bonds; (e) the state treasurer shall be the custodian of the proceeds of the taxes; (f) the acreage taxes are levied for the payment of the bonds and additional bonds could not be issued unless acreage taxes were levied sufficient to meet the requirements of the bonds. Not only is the language employed in the statute most clearly designed to appropriate the taxes exclusively to the payment of the bonds, but it is difficult to conceive of words which would more clearly and effectively make such an appropriation. When an effective and exclusive appropriation is made by the legislature itself, the taxes may not be used for any other purpose. The legislature not only used appropriate words of appropriation, but it took the precaution of setting the proceeds of the taxes aside in the possession of the state treasurer as a separate custodian.

The resolutions of the Board of Commissioners which authorized the respective issues of bonds, also provided that the acreage taxes be set aside and appropriated for their payment (R. 18-19).

The conduct of these state officials as commissioners of the District in recommending to the legislature the enactment of the subsequent statutes is similar to the conduct of state officials of the State of Florida as Trustees of the Internal Improvement Fund as referred to in *Trustees of Internal Improvement Fund* v. *Bailey*, 10 Fla. 112, where the court said:

"Nor can we persuade ourselves that the General Assembly of 1861 had the power to interfere in the slightest degree with any rights which have become vested under the Act of 1855. By that Act, all the Internal Improvement Fund is conveyed to trustees for certain purposes therein named, among which is the payment of the interest on certain bonds, such as those now held by appellee. And now that said bonds have been issued and have passed for a valuable consideration into the hands of *bona fide* holders who have taken them from motives of patriotism and upon the faith both of constitutional provisions and Legislative enactments; now that our roads have been in a great measure built with the very money furnished by the holders of these bonds, and the whole state is rejoicing in the use of them, surely it would be in the last degree wrong for a subsequent Legislature to say in effect by their acts, to the bondholders, 'We have gotten out of you all we wanted, we have gotten your money and built our roads with it, and now we will take the fund which we solemnly and irrevocably pledged to the payment of your interest and appropriate it to the making of other improvements.' But such is not the law. The state is as capable of making a contract as an individual is, and when made is as much bound by it."

Although a sinking fund was required to be set apart, and maintained for the payment of the bonds of the District as they should mature out of the appropriated taxes, by the statutes of the State of Florida and the resolutions of the Board of Commissioners of Everglades Drainage District which accompanied each issue of bonds (R. 18), all of which were part of the bond contract, it is alleged in the bill of complaint that such sinking fund has not been maintained and there are at present no funds in said sinking fund (R. 35) and these allegations are admitted by the

motions of defendants to dismiss the bill and supplement bills.

The law is well established that when taxes are specially levied and expressly appropriated for the payment of bonds by the provisions of the statutes under which the bonds are issued, the proceeds of such taxes are trust funds for the payment of the bonds, and cannot be diverted to any other purpose.

Von Hoffman v. *Quincy*, 4 Wall. 535;
Village of Kent v. *U. S.*, 113 Fed. 232 (C. C. A.
City of New Orleans v. *Fisher*, 91 Fed. 574, 1 U. S. 185;
Vickrey v. *Sioux City*, 104 Fed. 164;
Moore v. *Otis*, 275 Fed. 747 (C. C. A. 8);
Maenhaut v. *New Orleans*, 3 Woods 1, Fed. C 8940;
Gray v. *City of Santa Fe*, 89 Fed. (2d) 406 (C. C. 10);
Olmsted v. *Superior*, 155 Fed. 172;
Thompson v. *Emmett Irrig. Dist.*, 227 Fed. (C. C. A. 9);
Keefe v. *Adams*, 106 Fla. 733, 143 So. 644;
State v. *Harris*, 119 Fla. 375, 161 So. 374;
Clearwater v. *State*, 108 Fla. 623, 147 So. 459;
City of Winterhaven v. *Sumerlin*, 114 Fla. 154 So. 863;
Hubbell v. *Leonard*, 6 Fed. Sup. 145;
Miller v. *Hamilton*, 233 Fed. 402;
Fazende v. *City of Houston*, 34 Fed. 95;
Hidalgo County Road Dist. v. *Morey*, 74 Fed. 101 (C. C. A. 5);
Jewell v. *City of Superior*, 135 Fed. 19 (C. C. 7); cert. den. 198 U. S. 583;
Hayden v. *Douglass County*, 170 Fed. 24 (C. C. 7);

Smith v. *Boise*, 18 Fed. Sup. 385;

City of Jacksonville v. *Bankers Life Co.*, 90 Fed. (2d) 141 (C. C. A. 7);

George v. *City of Asheville*, 80 Fed. (2d) 50 (C. C. A. 4);

Ecker v. *Storm Sewer Drainage Dist.*, 75 Fed. (2d) 870 (C. C. A. 5).

The decision of the district court herein, from which the appeal is taken, is erroneous in dismissing the original and supplemental bills of complaint since, as alleged in the bill and supplemental bills, the subsequently enacted statutes of 1929, 1931 and 1937 are invalid in authorizing the diversion of the proceeds of the acreage taxes to purposes other than the payment of the bonds for which they had been specifically set apart and appropriated by the legislature itself in the statutes which are part of the bond contract, and since such subsequent statutes, in this respect also, clearly impair the obligation of the plaintiff bondholders' contract. By the allegation in respect of the diversion of the acreage taxes by the subsequently enacted statutes, a cause of action is stated by plaintiffs. In dismissing the bill and supplemental bills the district court has committed error in view not only of its own prior determination in this case, and under the decisions on this point by federal and state courts generally, but also its decision is in conflict with the decisions of the Supreme Court of Florida.

3. The subsequently enacted statutes of 1931 and 1937 impair the obligation of the plaintiffs' bond contract in that they substitute for the payment of all acreage taxes in money the payment or redemption of tax sale certificates or tax liens representing delinquent and unpaid acreage taxes in bonds and coupons, and thereby preclude the payment of the principal and interest of the bonds in money

as provided by the bonds and coupons and by the statutes forming part of the bond contract.

The statutes under which the bonds were authorized to be issued and were issued (Chapter 6456, Laws of Florida of 1913, as amended; R. G. S. secs. 1160-1188) provide that the principal and interest of the bonds are payable in gold coin or its equivalent in lawful money of the United States (Chapter 6456, sec. 20, as amended; R. G. S. sec. 1179), that the proceeds of the taxes shall be applied to the payment of the principal and interest of the bonds (Chapter 6456, sec. 19, as amended; R. G. S. sec. 1178), that such proceeds shall be set aside and appropriated for that purpose (Chapter 6456, sec. 24; R. G. S. sec. 1183), and that the provisions of the statute shall constitute an irrepealable contract between the Board of Commissioners and the bondholders (Chapter 6456, sec. 23; R. G. S. sec. 1182).

The 1931 and 1937 Everglades statutes provide for the payment or redemption of acreage tax sale certificates and tax liens representing unpaid acreage taxes in bonds and coupons of the District. If the redemption of tax sale certificates and tax liens representing past due taxes are paid in bonds and coupons, instead of in money, as provided in the subsequent statutes (Chapter 14717, Laws of Florida of 1931, sec. 71; Chapter 17902, Laws of Florida of 1937, sec. 12), the obligation to pay the principal and interest of the bonds as they mature in money, cannot be performed, because the new arrangement is one for satisfaction of taxes through cancellation of bonds and coupons. Furthermore a statute authorizing the use of bonds and coupons for the purpose of redeeming tax sale certificates and tax liens on tax delinquent lands, at a time when the taxes collected are insufficient to pay matured bonds and coupons in full, would be unconstitutional in that such statute would in effect permit certain bondholders to receive payment of

their bonds and coupons in full, while others not owning lands and so not in a position to pay taxes thereon, would receive only their proportionate share of the reduced amount of taxes collected in money.

In *First State Savings Bank* v. *Little River Drainage Dist.*, 122 Fla. 304, 165 So. 48, the Court said:

> "The decree in this case refusing to award an injunction to complainant below to restrain the Supervisors of Little River Valley Drainage District • • • from accepting bonds or interest coupons in lieu of money in payment of taxes due the District with which to provide for the payment of, and to retire, appellants' bonds, should be and the same is hereby reversed on the authority of the following cases: Frier *v.* State, 11 Fla. 300.; Crummer *v.* City of Fort Pierce, 2 Fed. Suppl. 737; McNee *v.* Wall, 4 Fed. Suppl. 496 (reversed by U. S. Supreme Court on other grounds); Keefe *v.* City of St. Petersburg, 5 Fed. Suppl. 132; Moore *v.* Branch, 5 Fed. Suppl. 101; Harris *v.* City of Miami, 6 Fed. 305; Humphreys *v.* State, ex rel. Palm Beach Co., 108 Fla. 92, 145 Sou. Rep. 858."

McNee v. *Wall,* 13 Fed. Supp. 326, affirmed 87 Fed. 2d 768 (C. C. A. 5);

Howard v. *State ex rel. McGarry,* 226 Ala. 215, 146 So. 414.

In a number of cases in the United States Supreme Court, sometimes referred to as the "Virginia Coupon Cases", it was decided that where a statute which was part of the bond contract authorized bondholders to pay taxes with the coupons from their bonds, subsequent statutes purporting to take away or to limit such right of the bondholders were unconstitutional as an impairment of the obligation of the bondholders' contract, and also that the existence of such contract as well as the validity of the subsequent legislation alleged to impair the obligation

of such contract were matters upon which the United State Supreme Court would not be bound by the decision of state court.

McCullough v. *Virginia*, 172 U. S. 102;
Antoni v. *Greenhow*, 107 U. S. 769;
Royall v. *Virginia*, 116 U. S. 572;
Hunt v. *State ex rel. Citrus Growers' Asso.*, 1 Fla. 753, 163 So. 83.

The foregoing cases establish the converse of the poi we here make; in principle, they are authorities in suppo of the proposition that where certain taxes are levied pay bonds and coupons and are specially set aside a appropriated for that purpose, subsequent statutes ca not be enacted authorizing the payment of such taxes bonds and coupons.

4. The subsequently enacted statutes of 1931 and 19 impair the obligation of the plaintiffs' bond contract in th they provide that the lands offered for sale by the tax c lectors at public auction for satisfaction of unpaid acre taxes and not purchased by other bidders at the sale f the amount of the defaulted taxes shall be bid off for t Board of Commissioners of the District, instead of for t Trustees of the Internal Improvement Fund of the St of Florida as provided in the statutes which are part the bond contract, since by such change through the s sequent statutes, the bid off lands are in substance exempt from the payment of acreage taxes while held by the Boa of Commissioners and would not be so exempted while h by the Trustees of the Internal Improvement Fund and t Trustees are thereby relieved from the payment of ta on the bid off lands.

The statutes which are part of the bond contract (Cha ter 6456, Laws of Florida of 1913, as amended by Chap

7305, Laws of Florida of 1917, Revised General Statutes of Florida, 1920, Secs. 1160-1188) provide that when the tax collector shall offer for sale lands on which acreage taxes have not been paid, in case there are no bidders at such sale who bid for the offered lands the amount of the delinquent acreage taxes, the whole tract on which the unpaid taxes are levied shall be bid off by the tax collector for

> "* * * the Trustees of the Internal Improvement Fund, and shall be held by said Trustees during the period herein allowed for the redemption of said lands in like manner and with like effect as lands sold to the State for non-payment of State and county taxes are held by the State as now provided by law; * * * The land shall be struck off to the person who will pay tax, costs and charges for the least portion of the land, * * *" (Chapter 6456, Sec. 12 as amended by Chapter 7305, Laws of Florida of 1917, Sec. 3; R. G. S. Sec. 1171).

The section of the statute (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164) which levies the acreage taxes provides that "annual assessments of taxes shall be and are hereby levied and imposed upon all the lands within said District." The lands within the District are divided into zones, and the acreage taxes are levied at the specified rates upon the lands described by township, range and section. At the conclusion of the section of the statute which has levied the taxes upon all of the lands within the District, there is the following provision in respect of lands held by the Trustees of the Internal Improvement Fund (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164):

> "The lands within said district held by the trustees of the internal improvement fund shall be subject to the taxes hereby imposed, and the said trustees, in furtherance of the trusts upon which the said lands are held are hereby authorized and empowered to pay

the same out of any funds in their possession derived from the sale of lands or otherwise."

Under the foregoing provisions of the section of the statute levying the annual acreage taxes upon all the lands within the District, which were in effect during all the time bonds were being issued, no distinction is made between lands held by individuals other than the Trustees of the Internal Improvement Fund, lands held by the Trustees at the time the District was formed, lands acquired by the Trustees after the formation of the District whether the lands were bid off for the Trustees or acquired otherwise; in fact the lands are described in the section of the statute without any reference whatever to the owners of the lands. If lands bid off for the Trustees should not be subject to the annual payment of acreage taxes, then, contrary to the provision of the taxing section of the statute, less than all of the lands of the District are subject to the annual payment of acreage taxes, and lands specifically described in the taxing section by township, range and section for the sole purpose of making such lands subject to the annual payment of acreage taxes are not in fact subject to such payment. The usual way to make lands subject to annual payment of acreage taxes is to state that they are so subject, and to describe the lands so subject with sufficient definiteness to identify them. This has been done in the present statute.

If certain lands in zone 1 subject to acreage taxes at $1.00 per acre are bid off for the Trustees, the lands so bid off still retain their place in zone 1 and are still subject to the annual acreage taxes levied upon them. In the absence of a provision of the statute expressly excepting bid off lands from acreage taxes, the lands so bid off for the Trustees are subject to the annual payment of acreage taxes by virtue of the provisions of the taxing section and the loca-

tion of the lands within the zone of the District which subjects the lands to taxes at the rate specified in the statute regardless of who the owner is or of how he acquired the title. If it is asserted that the lands bid off become exempt from the taxes notwithstanding the provisions of the taxing section subjecting them to taxes, the burden is on the person who so asserts to establish the manner in which such bidding off exempts the lands from taxes in the absence of an express provision to that effect.

The provisions in the 1931 statute (Chapter 14717, Laws of Florida of 1931, sec. 56 (c)) which impair the obligation of the bond contract are in effect that the lands shall be bid off for the Board of Commissioners instead of for the Trustees of the Internal Improvement Fund, that the lands theretofore bid off for the Trustees or the tax certificates representing such lands shall be transferred by the Trustees to the Board of Commissioners, and that an adjustment shall be made between the Board and the Trustees for which the Board shall issue certificates of indebtedness. The Board of Commissioners would be unable to pay acreage taxes on such lands as substantially the only funds out of which such taxes could be paid would be the taxes on other lands in the District, furthermore, there would be no purpose served in the payment by the Board of taxes which would be collected for the Board. The pleadings allege the facts in respect of the Trustees which show the bond contract and its impairment (R. 9-26, 27-31, 36-37, 39-40, 60-63, 220) and the truth of these facts is admitted by the motion of defendants to dismiss.

There is involved both the question whether the legislature of the State of Florida had the power to require the Trustees of the Internal Improvement Fund to pay the drainage taxes on the lands in Everglades Drainage District bid off for the Trustees at tax sales under the provi-

sions of the statute, and if it had such power, whether by appropriate and effective provisions of the statute it has required the Trustees to pay the acreage taxes on such bid off lands.

In *Martin* v. *Dade Muck Land Co.*, 95 Fla. 530, 116, So. 449, the Supreme Court of Florida decided that the legislature had the power to enact such a provision. In the Dade Muck Land case, the plaintiff, an owner of land in the District subject to acreage taxes, filed a bill in equity in the state court asking the court to determine on various grounds that a Florida statute enacted in 1927 (Chapter 12016) was unconstitutional and to enjoin its enforcement. The statute authorized the issue of $20,000,000 of additional bonds of Everglades Drainage District; no bonds were issued under this statute and it was later repealed. The statute provided, in part (95 Fla., at p. 553):

> "The lists of properties and taxes thereon in the several counties shall be certified to the Tax Assessors in the same manner, as near as may be, that land lists are now certified under Section 1167 of the Revised General Statutes of Florida and in all other respects the law governing the assessment and collection of drainage taxes, and the sale of lands for the non-payment of such taxes in the Everglades, shall be and is hereby made applicable, as near as may be, to the tax hereby authorized for the payment of such bonds, except that with respect to such tax, the Trustees of the Internal Improvement Fund shall, in the absence of other satisfactory bidders, buy in any lands sold for such tax, paying immediately the amount thereof, using any funds in hand, or to be appropriated by the State for such purposes. * * *"

One of the prayers for relief was "That all of the provisions of said act * * * which purport to bind the Trustees of the Internal Improvement Fund of the State of

Florida to pay the said taxes, * * * may be determined to be unconstitutional * * *". A demurrer of the defendant Trustees of the Internal Improvement Fund was based upon the following ground, among others (p. 549):

> "8. The State has lawful power to enact a law providing for a Special Drainage District in which such State is a property owner, and to make a contract with the holders of bonds to be used against such district that in the event any lands owned in such district are sold for special improvement taxes assessed on lands in the district that such lands shall be bought in and the taxes paid by the Trustees of the Internal Improvement Fund out of any moneys in hand, or to be appropriated by the State for such purpose."

The court, after giving a restricted meaning to the words in the statute "or to be appropriated by the state for such purposes", sustained the demurrer of the Trustees to the bill, and thus held that there was power in the legislature to enact the foregoing provision. *Trustees I. I. Fund* v. *Bailey*, 10 Fla. 112, also upheld such power of the legislature.

In considering the meaning and effect of the provision in the Everglades statute for bidding off the lands for the Trustees, instead of for the Board of Commissioners, there arises at the outstart the question, what was the purpose of the change, made at a time when the Board of Commissioners of the District under the authority of the legislature were seeking to sell bonds of the District and their efforts to sell bonds for several years prior thereto had been unsuccessful. Since the purpose of the change in the statute was to improve the statute in order to enable the District to sell bonds, there could be no doubt that imposing upon the Trustees instead of the Board of Commissioners, the obligation to pay taxes upon the bid off lands would

be helpful. The statutory arrangement was not to sell the lands at tax sales to the highest bidder but to sell only if at least the amount of defaulted taxes were bid. This provision was made for the benefit of the bondholders. If the legislature intended that the Trustees were to be under no obligation to pay taxes on the bid off lands then there was no purpose whatever in making the 1917 amendment to the statute for the provision then contained in the statute that the lands should be bid off for the Board of Commissioners accomplished that result. On the other hand, if the legislature, as an inducement to the purchase of bonds, intended that the bid off lands should be subject to the annual acreage taxes, it was necessary to make an amendment in the statute, such as was in fact made, since the lands when bid off for the Board of Commissioners under the then existing provision of the statute were in effect exempt from the taxes solely because of the inability of the Board to pay such taxes. Since the statute has expressly provided that all the lands in the District are subject to the acreage taxes expressly including lands held by the Trustees, the lands bid off for the Trustees, who are under no such inability to pay taxes as the Board of Commissioners, are subject to the taxes because they are not expressly excepted and there is no basis in the statute for an implied exception.

It was natural to provide as a means of procuring the sale of bonds that the Trustees should pay taxes on bid off lands, since the effort to sell bonds of the District had been unsuccessful, the State is under obligation to the United States by the terms of the Federal statute granting the lands to improve these swamp and overflowed lands, *McGee* v. *Mathis*, 4 Wall. 143; *Mills County* v. *Burlington & M. R. R. Co.*, 107 U. S. 557, the State was confronted with the problem of improving these lands and if bonds were not

sold the assets of the Trustees, as in the past, would be the source from which the improvements would be made as supplemented by the acreage taxes. The Trustees as the agents of the state were under duty to drain and reclaim the swamp and overflowed lands, and had administered these swamp and overflowed lands as the agents and representatives of the State of Florida since the year 1855 (R. 15, 19). In *Trustees I. I. Fund* v. *Root*, 63 Fla. 666, 58 So. 371, the nature and extent of the improvements in these lands which the Trustees had made before Everglades Drainage District was formed are set forth. At the time the District was formed, the Trustees were very substantial landowners in the District (R. 5, 19), and on such lands they were required by the Everglades bond contract statute (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730) to pay acreage taxes. Until the bonds of the District were sold to the public, the Trustees, out of such funds as they had available for that purpose, carried out their duty of draining and reclaiming the lands. The bonds of the District were issued under the bond contract statutes (Chapter 6456, Laws of Florida of 1913 as amended; R. G. S. Secs. 1160-1188 as amended) in order that their proceeds might be used in making the improvements in the District more rapidly than they could be made solely out of the funds of the Trustees, *Rorick* v. *Board of Commissioners*, 57 F. 2d 1048, 1051. The proceeds of the acreage taxes levied in said statute in turn were to be used for the payment of the bonds (Chapter 6456, Secs. 24, 19 as amended; R. G. S. Secs. 1183, 1178). For the protection of the bonds the statute provided that the lands were not to be sold at tax sales for less than the amount of the defaulted acreage taxes and if such amount were not bid, the statute required (Chapter 6456, Sec. 12 as amended; R. G. S. Sec. 1171) the lands to be bid off for the Trustees,

who were not permitted to sell them for less than the amount of the defaulted taxes (Chapter 6456, Sec. 16 as amended; R. G. S. Sec. 1175) and after the two-year period of redemption were required to pay the taxes thereon. (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730).

It has been contended by defendant Trustees that they are not required to pay the tax sales certificates representing the amount of defaulted taxes on the bid off lands at the time of the tax sale, or to pay the subsequent acreage taxes thereon because the bid off lands were held by the Trustees in a different capacity from that in which they hold other lands in the District. This is unsound and there is no basis for such distinction because the Everglades statutes under which the bonds were issued does not provide that the Trustees hold the lands bid off for them at tax sales in a different capacity or upon a different trust from that in which they hold other lands in the District. When the Everglades Drainage District was formed in 1913, the statutes of the State of Florida creating the Trustees of the Internal Improvement Fund and vesting in them the swamp and over flowed lands and other lands of the state, had been in force many years and the Trustees of the Internal Improvement Fund were a well known institution in Florida. Although the name "Trustees of the Internal Improvement Fund" is used many times in the Everglades statutes including the provision for bidding off tax delinquent lands for the Trustees, nowhere in the Everglades statutes are stated even the names of the individuals who compose the Trustees as such; there is an implied reference made (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164, at page 730) to the statute which created the Trustees (Chapter 610, Laws of Florida, 1855). The Trustees of the In-

ternal Improvement Fund named in the statutes under which the bonds of Everglades Drainage District were issued and the lands are bid off at tax sales are the Trustees named in the statute creating the Trustees of the Internal Improvement Fund, and the duties of the said Trustees in respect of the tax delinquent lands in Everglades Drainage District bid off for them and held by them are the same as their duties in respect of other lands in the District as defined by the statute creating the Trustees of the Internal Improvement Fund, except to the extent that such duties are qualified by the Everglades statutes authorizing the issue of the bonds of the District and providing for the bidding off of the lands. The important qualification in the duties of the Trustees in respect of the bid-off lands, made by the statutes under which the bonds were issued, are that during the two year period of redemption provided in those statutes (Chapter 6456, Secs. 12, 16 and 5 as amended; R. G. S. Secs. 1171, 1175 and 1164), the Trustees are directed to hold the bid off lands in like manner and with like effect as lands sold to the State for non-payment of State and County taxes were held by the State as then provided by law, that the Trustees shall not sell the bid-off lands for less than the amount of the defaulted taxes and the Trustees are affirmatively required to pay the taxes on the bid-off lands.

One of the principal contentions of the Trustees is that they hold the lands bid off for them in this District in the same manner as the State holds lands bid off for it for non-payment of State and County taxes. The Trustees thus try to ignore the express provision of the Everglades statutes that the period is limited to two years, in which the Trustees hold lands bid off for them in this District like the State holds lands bid off for it for non-payment of State and County taxes. It is unnecessary for the pres-

ent purpose to inquire how the State holds lands bid
for it since we are concerned here only with the period
which the Trustees hold the bid off lands after the expi
tion of such two year period in which the Trustees h
like the State. Since the statute divides into two pa
the time in which the Trustees hold the bid-off lands, fi
the two year period in which they hold as the State ho
lands bid off for it, and second, the remaining time in wh
they hold as such Trustees, as defined in the statutes c
ating them except to the extent modified by the provisi
of the Everglades statutes, it necessarily follows that
Trustees in the second period hold the lands in a d
ferent manner from that in which they hold them in
first period. The two year period was provided in
statute to give the Trustees opportunity to sell the la
and thus decrease the burden of taxes imposed upon the
This two year period of redemption, which is part of
bond contract, could not be extended by subsequent st
ute after the bonds were issued without impairing the o
gation of the bond contract, *Howard* v. *Bugby*, 24 H
461; *Barnitz* v. *Beverly*, 163 U. S. 118; *Hull* v. *State*
Fla., 29 Fla. 79; *State ex rel. Stieff* v. *Bradshaw*, 39 F
137. After the two year period the Trustees hold the
off lands just as they would hold from the time the la
were bid off for them if the Everglades statute had ma
no provision for a two year period and had made no r
erence to lands bid off for the State for non-payment
State and County taxes.

When the change was made in the Everglades stat
directing the bidding off of the lands at tax sales for
Trustees (Chapter 6456 as amended by Chapter 7305, La
of Florida of 1917), other provisions were thereby ma
necessary in the Everglades statute and were insert
which also indicate that the Trustees were to pay taxes

the bid off lands after the two year period. One of the important amendments of the statute made because of the provision for bidding off the lands for the Trustees instead of for the Board of Commissioners is that the proceeds of sale by the Trustees of bid off lands held by them shall be "applied by the said Trustees in the payment of drainage taxes or assessments or other obligations of said Trustees." This provision is consistent with the provision of the statute which levies the acreage taxes upon all lands in the District including the lands of the Trustees. The Trustees are thus permitted by the statute to apply the proceeds of sales of bid off lands to the payment of their own obligations, only because the Trustees hold the bid off lands as owners thereof. Before the amendment of 1917, providing for the bidding off of the lands for the Trustees, the statute (Chapter 6456, Sec. 16) provided that the lands should be bid off for the Board of Commissioners and in substance that the proceeds of sale of the lands should be expended by the Board for its own purposes. The foregoing provision of the statute also permits the Trustees to apply the proceeds of the sale of the bid off lands to the payment of drainage taxes. If the bid off lands were held by the Trustees for the District as contended by defendants, the proceeds of the sales of the bid off lands would be held by the Trustees, not as the statute provides, to be applied in payment of drainage taxes or other obligations of the Trustees, but as the funds of the District under obligation on the part of the Trustees to turn the funds over to the Board of Commissioners as their funds. The 1917 amendment also made a similar change in respect of the disposition of amounts paid in redemption of tax sale certificates representing bid off lands (Chapter 6456, Sec. 17 as amended; R. G. S. Sec. 1176).

The Trustees by their conduct in administering the Everglades statute, during the time bonds of the District were being issued, made the interpretation thereof for which we here contend (R. 27). The question whether the Trustees were required to pay immediately, like individual purchasers at the tax sales, the amount named in the tax sale certificate representing the bid off lands and to pay immediately the acreage taxes thereon, or were required to make such payment only two years after the lands were bid off to them, was considered at a meeting of the Trustees held in March, 1924 (R. 27-29). In the minutes of that meeting it is stated that the Trustees and their counsel hold that the law contemplates and provides that the amounts involved in the drainage tax certificates representing bid off lands should not be paid by the Trustees "until such certificates have ripened into title in said Trustees, such ripening into title being two years from the date of such tax sales." We are unable to make a better statement of our position on this appeal than is made by the Trustees and their counsel in their minutes. Not only was the Attorney General of the State one of the Trustees, but in the year 1917 when the amendment was made to the statute providing for bidding off of the lands for the Trustees, he was one of the Board of Commissioners who presented and recommended the enactment of this amendment for the purpose of enabling the District to sell bonds. A resolution adopted by the Trustees is set forth in the same minutes (R. 28-29) to the effect that if necessity arose, they would not, in paying acreage taxes on the bid off lands, take advantage of the two year period given them by the statute, but would anticipate the time when they should be required to pay.

In accordance with the foregoing interpretation of the statutes made by the Trustees and their counsel as recorded

in the minutes, the Trustees followed the practice of paying the taxes on the bid off lands. It is alleged in the complaint (R. 31) that the Trustees of the Internal Improvement Fund have paid for all tax sale certificates bid off for them to and including the sales made for the 1927 drainage taxes and have paid the drainage taxes on the lands represented by such certificates, but that the Trustees have not paid for the tax sale certificates representing lands bid off for them on sale for the 1928 drainage taxes and subsequent drainage taxes. This is admitted by the motion to dismiss. Thus, as officers of the State, with the duty of administering the statute, the Trustees by their conduct made a practical interpretation thereof. In fact, the Trustees, by motion dated June 16, 1925 (R. 29-31), in order to induce bond purchasers to purchase additional bonds, further stated their position, under the terms of the Everglades statute as amended, by agreeing to pay promptly for tax sale certificates at the time delinquent lands are bid off to them by the tax collectors just as other bidders are required to pay for such certificates. This construction was made unanimously by the Trustees including the Attorney General (R. 30-31) and was at no time thereafter questioned until long after all outstanding bonds had been issued and sold. The prospective bond purchasers addressed a letter to the Trustee dated June 15, 1925 (R. 30), which stated in part:

> "• • • We hereby confirm the agreement of your Board on June 12th, that because you own approximately 1,000,000 acres of land in said Drainage District and are interested in its development, that as an inducement for us to submit said proposition and to purchase said bonds therein specified, your Board agreed to promptly pay the Drainage Board for all Everglades Drainage Tax Sale Certificates heretofore bid off to you by the Tax Collector, and to hereafter at the time of the tax sales pay the Everglades

Drainage District taxes on all lands bid in to you by the Tax Collectors. * * *"

A resolution was unanimously passed by the Trustees that the foregoing agreement be adopted (R. 30, 31).

While the foregoing resolution of the Trustees, voted for by all the Trustees including the Attorney General, shows the great interest of the Trustees in promoting the sale of bonds of the District, its purpose here is to indicate the interpretation which the Trustees made of this bid off provision of the statute; they interpreted it to mean what we here contend it does mean, namely that there is an obligation upon the Trustees to pay for tax sale certificates and to pay taxes on the bid off lands two years after they are bid off. Their agreement under the foregoing resolution was to make the payments at an earlier time.

The Attorney General of Florida in the written opinion which he gave in every case to induce the sale of the bonds of the District (R. 16) stated, as alleged in the complaint, "that he unqualifiedly approved the collectibility of said bonds and of the sufficiency of the taxing power back of them, and that he made such statements in reliance upon the considerations enumerated in this paragraph of the complaint and similar considerations contained in the statutes under which the bonds were issued." This is admitted by the motion of defendants to dismiss.

The practical interpretation of a statute made by state officers whose duty it is to administer the statute is the best evidence of its meaning, especially where, as in the present case the statute has been reenacted from time to time while such interpretation is being made.

National Lead Co. v. *United States*, 252 U. S. 140, 145-6;

United States v. *Missouri P. R. Co.*, 278 U. S. 269, 280;

Brewster v. *Gage*, 280 U. S. 327, 336;
United States v. *Shreveport Grain Co.*, 287 U. S. 77, 84;
McFeely v. *Com'r of Internal Revenue*, 296 U. S. 102, 108;
Bloxham v. *Consumers' Elect. Light and Street R. Co.*, 36 Fla. 519, 540.

During the whole period in which bonds of the District were being issued these five state officers in the capacity both of Trustees of the Internal Improvement Fund and of Board of Commissioners (R. 4), if not indeed also as state officers without regard to the foregoing capacities, were engaged in administering this District and in selling bonds of the District to the public. They presented to the legislature the amendment providing for the bidding off of the lands for the Trustees instead of for the Board of Commissioners, they recommended it and applied for its adoption, and they then made their own practical interpretation of it in their direct dealings with the prospective purchasers of bonds for the purpose of inducing them to purchase bonds of the District in reliance upon such interpretation. Such action was joined in by the Attorney General as one of the Trustees. These Trustees now ask this court to make an interpretation of the 1917 amendment in conflict with the interpretation made by such Trustees themselves in administering the statute (R. 27-31) and in their dealings with bondholders for the purpose of inducing them to purchase bonds, and the purpose of their present contention is to deprive the bondholders of that security which they then assured them they would receive if they purchased the bonds.

Not only are the lands in the District, when bid off for the Trustees of the Internal Improvement Fund, subject to the lien of the acreage taxes but a mandatory duty

is imposed by the bond contract statutes upon the Trustees to pay such taxes. After providing that all lands in the District described in the statute are subject to the acreage taxes therein levied, the statute expressly provides (Chapter 6456, Sec. 5 as amended; R. G. S. Sec. 1164 at page 730) that the lands within the District held by the Trustees "shall be subject to the taxes hereby imposed, and the said Trustees in furtherance of the trusts upon which said lands are held are hereby authorized and empowered to pay the same out of any funds in their possession derived from the sale of lands or otherwise". The foregoing words impose a mandatory duty upon the Trustees to pay such taxes:

Municipality of Pensacola v. *Lehman*, 57 Fed. 324 (C. C. A. 5);

Board of Supervisors of Rock Island County v. *U. S.*, 4 Wall. 435;

Chase v. *United States*, 256 U. S. 1;

Virginia v. *West Virginia*, 246 U. S. 565;

Galena v. *United States*, 5 Wall. 705;

S. A. L. Ry. Co. v. *R. R. Commissioners*, 100 Fla. 1027.

Since these were the lands of the State of Florida administered by the Trustees as the agents of the State, there would be no implication that the Trustees in the exercise of their discretion by failure to pay taxes on these State lands could cause them in effect to be lost to the State. In the section of the statute imposing taxes upon all the lands within the District (Chapter 6456, Sec. 5 as amended: R. G. S. Sec. 1164) the only landowners named are the Trustees and the only reason for naming the Trustees is in order to impose upon them the obligation and duty to pay the taxes.

The statutory arrangement made necessary a mandatory duty on the part of the Trustees to pay the taxes on the bid-off lands, since the provision for bidding off for the Trustees was part of the arrangement to insure payment of the taxes, obviating the necessity for a sale of the lands at tax sales to others for less than the amount of the delinquent acreage taxes. The statute did not contemplate a sale of the bid-off lands while held by the Trustees for less than the defaulted taxes; it did provide that the Trustees must pay the taxes on the bid-off lands. If the bid-off lands are merely subject to the acreage taxes while held by the Trustees but the Trustees are not required to pay the taxes, upon default in payment while the Trustees hold the lands, there would be no right to enforce the payment of the taxes except by sale by the tax collector at tax sale. In the event that the Trustees have no assets, or resources out of which to pay the taxes, a difficulty would arise which, upon application by bondholders, a court would remedy probably by permitting the sale of the lands held by the Trustees for less than the amount of the defaulted taxes.

The Everglades statutes under which the bonds were issued in effect conditionally relieved the Trustees of the burden imposed upon them by the statute of 1855 of applying their assets to the draining of the swamp and overflowed lands and thereby made available for such purpose the proceeds of the bonds authorized to be issued and sold to the public, but the Everglades statute reimposed upon the Trustees a part of their burden to the extent that they were required to pay acreage taxes upon all lands in the District held by them, and if lands in the District were offered for sale by tax collectors and could not be sold for the amount of the defaulted acreage taxes, the Trustees reacquired the

lands and thereafter held them under obligation to pay the taxes annually levied thereon by statutes which are part of the bond contract.

If the Trustees hold the bid off lands as Trustees for bondholders or for the Board of Commissioners, as contended by the attorney for defendant Trustees, and are not required to pay the taxes on the bid off lands, then it is impossible to carry into effect certain vital parts of the Everglades statute authorizing the issue of bonds and the levy of acreage taxes. The amount of lands in the District which would be bid off for the Trustees at tax sales during the period in which the bonds of the District should be outstanding could not be determined in advance; yet the statute provides (Chapter 6456, Sec. 19, as amended; R. G. S. Sec. 1178) that when additional bonds are authorized to be issued, such authority shall be accompanied by the levy of additional taxes sufficient to pay the bonds. If the foregoing words of the statute do not impose a mandatory duty upon the Trustees to pay the taxes upon the bid-off lands held by them, which they are required to hold until they can sell them for the amount of the defaulted taxes (Chapter 6456, Sec. 16, as amended; R. G. S. Sec. 1175), it would have been impossible, at the time the Amendment to the statute authorized the issue of additional bonds, to determine the amount of additional taxes which it was necessary to levy in order to provide sufficient funds to pay the bonds. One of the purposes of the Everglades statute, and one of the inducements to the public to purchase the bonds of the District, was an assurance that at all times there would be sufficient proceeds of taxes to meet bond requirements to the extent that the acreage taxes and the assets of the Trustees could give such assurance

As additional bonds were issued, additional acreage taxes levied, and the zones into which the lands of the Dis-

trict are divided were changed, the same language in the statute was continued, levying acreage taxes upon all the lands in the District including the Trustees' lands, and the lands which theretofore had been bid off for the Trustees were expressly included in the statute by description as subject to the additional acreage taxes. The bid off lands were bid off in the name of the Trustees, they were entered on the tax rolls in the name of the Trustees, and this constituted the authority of the tax collectors to collect the acreage taxes levied on such lands from the Trustees. If the present contention of the Trustees were accepted, then at the time bonds were sold, the statute provided that all the lands in the District were subject to the payment of acreage taxes when that part of the lands bid off to the Trustees were not in fact so subject.

The District Court herein, upon the former application, determined, one judge dissenting (*Rorick* v. *Board of Commissioners*, 57 Fed. 2d 1048, 1061), that the Trustees of the Internal Improvement Fund held the lands bid off for them at tax sales under the Everglades statute in furtherance of the trusts upon which the Trustees held lands under the statute of 1855 under obligation to pay acreage taxes thereon. In the majority opinion, it is stated:

> "Viewing the history of this legislation in the light of the allegations of the bill of complaint, it appears that by 1917 it had become apparent that drainage taxes might remain unpaid to such an extent that funds of the district would be insufficient to meet bond requirements if additional bonds were issued, and that, before additional bonds would be salable, it would be necessary to guard against such a situation. This was undertaken by requiring the trustees of the internal improvement fund, instead of the board of commissioners, to become the purchasers of all tax certificates for which there was no other purchaser, thus preventing tax default and consequent depletion

of the district fund available for interest and sinking fund requirements. The provisions of the act of 191 relating to the trustees are harmonious with the pur poses of the internal improvement fund as defined by chapter 610, Acts 1855. See Martin *v.* Dade Muck Land Co., 95 Fla. 530, 116 So. 449. (p. 1060; R. 103 104)

* * * *

"These and other provisions, when adjusted t their proper perspective in relation to the entire Ever glades legislation, lead us to hold that, so far as th bond contract is concerned, lands thus bid in for th trustees (commonly referred to as 'certificated lands) become 'lands within the Everglades Drainag District 'held' by the Trustees of the Internal Im provement Fund,' within the meaning of section 5 o the original act, two years after the date of the certi cate, when title vests in the trustees if the certificat be not sooner redeemed. (p. 1061; R. 106)

"As these provisions are a part of the bond con tract, it is the duty of the trustees to pay drainag taxes levied on such lands from and after the tim when title vests in the trustees, pursuant to the act under which plaintiffs' bonds were issued, such pay ment to be made from funds derived by the truste from 'the use or sales of swamp and overflowed land held by the trustees * * * under the trusts de clared in chapter 610, Acts 1854-1855 * * * and sub sequent amendatory and supplemental statutes.' Mar tin *v.* Dade Muck Land Co., 95 Fla. 530, 116 So. 44 headnote 3. * * *" (p. 1061; R. 106)

In the dissenting opinion (57 Fed. 2d 1048, 1063; 109-110), Judge Bryan states that the Trustees hold th bid-off lands subject to the owner's right of redemptio which continues until the land is sold, and during suc period hold the lands "for the bondholders and oth creditors of the drainage district", even though Judg Bryan himself states:

"* * * The Compiled General Laws provide that lands upon which drainage taxes are delinquent may be sold, and if there is no private bidder, shall be 'bid off' by the tax collector for the Trustees to be held by them for the two year period allowed for redemption 'in like manner and with like effect as lands sold to the State for non-payment of State and County taxes are held by the State.'' (R. 110.)

The fundamental error in the dissenting opinion is that it interprets the statute as providing that the Trustees hold the bid off lands as the State holds lands bid off for it, not for the two year period of redemption expressed in the statute but during the whole period in which the Trustees hold the lands. For his conclusion Judge BRYAN relies upon *Hightower* v. *Hogan*, 69 Fla. 86, 68 So. 669, which applied solely to a statute in respect of lands bid off for the State for non payment of State and County taxes; in the State statute it is provided that the right to redeem lands while held by the State continues until the date when a deed of conveyance is executed to a purchaser of the lands from the State, and for this reason the *Hightower* case has no application to the Everglades Statute, which provides that the Trustees hold like the State only during the two year period of redemption provided in the Everglades statute. The *Hightower* case is merely the application of the different provision of the state statute to a different matter.

Judge BRYAN states in his dissenting opinion that the Trustees are not required to pay the delinquent drainage taxes on the lands bid off for them until they sell such lands; however, this is the bare statement by him of a conclusion to which no provision of the statute furnishes support, and on the contrary as we have shown the statute expressly levies acreage taxes upon all the lands in the District. Judge BRYAN also states that the provision in

the Everglades statute subjecting land within the District held by the Trustees to drainage (acreage) taxes refers to land owned by the Trustees, in their own right, and not to lands bid off for the Trustees; but there is no provision of the statute to that effect and Judge BRYAN refers to none. Lastly Judge BRYAN states that if it had been the intention of the legislature to bind the Trustees as purchasers of lands upon which drainage taxes had not been paid, there should and doubtless would have been a plain and unequivocal provision to that effect. But there is such a provision as we have shown. It is admitted by the Trustees that the lands other than bid off lands held by the Trustees, are subject to the annual acreage taxes. If the Trustees purchased privately lands in the District or if they retook lands in the district which they had sold, such lands obviously would be held by the Trustees and would be subject to the annual acreage taxes although not held by the Trustees at the time the District was formed. There is no distinction under the language of the statute between lands held by the Trustees at the time the statute was first enacted and lands thereafter acquired by the Trustees, which could be worked out through the word "held" in the statute as applied to Trustees' lands in the District. All lands in the District are subject to the payment of the annual acreage taxes and this includes all lands held by the Trustees however acquired and the Trustees are required to pay such taxes.

The state court in *State ex rel. Board of Commissioners* v. *Scholtz*, 112 Fla. 756, 150 So. 878 (November 1933) has made a decision on the present point which requires consideration. At the time the federal district court herein made its decision on the former application of plaintiffs for interlocutory injunction, both the Board of Commissioners and the Trustees of the Internal Improvement

Fund were parties defendant herein, and in their motions to dismiss and by the answers which they have filed, took the position that the Trustees of the Internal Improvement Fund are under no obligation whatever to pay acreage taxes on lands in the District bid off for them (R. 111, 117, 130, 133, 144, 150; R. 167, 179, 183). The Board of Commissioners including the five principal state officers who constituted the Trustees of the Internal Improvement Fund, had caused to be introduced and recommended to the legislature the statute which purports to relieve the Trustees from the obligation to pay taxes on the bid off lands, and upon the application of the Board of Commissioners the statute was enacted by the legislature. After the decision by the district court on the former application herein, the Board of Commissioners, as the sole relators, brought a mandamus proceeding in the Supreme Court of Florida, in which the Trustees of the Internal Improvement Fund were the sole respondents, for the purpose of compelling the respondent Trustees to accept the tender of a tax sale certificate in respect of lands bid off for the Trustees of the Internal Improvement Fund and thereafter, pursuant to the statute of 1931 (Chapter 14717, Laws of Florida of 1931) transferred by the Trustees to the Board of Commissioners, and to compel the Trustees to pay for the tax sale certificate together with the amount of the acreage taxes which had subsequently accrued and remained unpaid on the land covered by the certificate. The sole respondents in that proceeding, the Trustees of the Internal Improvement Fund, filed a motion to quash the alternative writ of mandamus which the court granted and thereby refused to issue a peremptory writ of mandamus. In its opinion, *State of Florida ex rel. Board of Commissioners* v. *Sholtz*, 112 Fla. 756, the court, after stating that the sole question presented is whether the Trus-

tees are required to accept and pay for tax certi
issued by tax collectors in respect of lands bid off for
and the subsequent taxes said "We are unable to
with the majority opinion in the case of *Rorick* v. *B*
of Commissioners of Everglades Drainage District
ported in 57 Fed. 2d 1048, wherein opposite conclu
are reached". On this point the state court adopted
dissenting opinion of the district court herein on the fo
hearing except that if stated that in its opinion the T
tees hold the bid off lands "in trust for the Commissio
of Everglades Drainage District", instead of for the b
holders and creditors as Judge BRYAN had concluded.

The decision of the state court in the *Sholtz* case sho
not be followed by this Court not only because this Co
will decide for itself the federal question involved as
the alleged impairment of plaintiff bondholders' contra
including the determination of the questions what was t
contract, what was its proper construction and effect, a
was its obligation impaired by subsequent legislatio
Appleby v. *New York*, 271 U. S. 364, but also becaus
rights of bondholders under their bond contract had b
come vested long before the 1931 Everglades statute wa
passed, the federal district court herein had interprete
the state statute and made its decision more than a yea
before the *Sholtz* case was decided in the state court and
such interpretation is sound, and because of the manner
in which the *Sholtz* decision was secured. We contend
that the mandamus proceeding in the *Sholtz* case did not
involve any actual controversy, since the Board of Com-
missioners and the Trustees were the only parties to the
proceeding, and in the present suit the Board of Com-
missioners as a defendant has always taken and now takes
a position opposite to that which it pretended to take as
relator in the mandamus proceeding in the *Sholtz* case.

and precisely the same position which the Trustees have taken in the present case and took in the *Sholtz* case. The Board of Commissioners could not seriously assert that they were endeavoring in the *Sholtz* case to have the state court hold that the Trustees are required to pay taxes on the bid off lands. Anyone having the duty of selecting a proper person to present such a matter to a court would not select for that purpose the Board of Commissioners, who had caused the statute of 1931 to be passed for the purpose of relieving the Trustees from such liability, and whose desire and purpose at all times after the passage of the 1929 statute was to secure the result that the Trustees were not under obligation to pay acreage taxes on the bid off lands (R. 37). The attorneys for the Board in the *Sholtz* case were the same attorneys who represented the Board at that time in the present case and who prepared the former motion to dismiss and the answer of the Board in the present case in which the Board alleged that the Trustees are not under obligation to pay taxes on the bid off lands (R. 176-177, 179, 183). The attorneys for the relator Board, as well as the attorneys for the respondent Trustees, desired the adverse result in the *Sholtz* case which they received, and they were not qualified under the circumstances to present the matter properly to the state court, resulting in lack of proper pleading of the pertinent facts and thorough argument for the assistance of that court.

Where the question is whether a contract has been impaired by subsequent legislation contrary to the contract clause of the Federal Constitution, this Court, while it will give proper consideration and due weight to the adjudication of the state court, will determine independently thereof whether there is a contract, what is its obligation and whether such obligation has been impaired.

McCullough v. *Virginia*, 172 U. S. 102;
Coombes v. *Getz*, 285 U. S. 434, 441;
Appleby v. *New York*, 271 U. S. 364, 379;
New York Rapid Transit Corp. v. *New York*, 303 U. S. 573, 593.

No subterfuge in securing a decision from a state court where there is no real controversy and without proper pleadings and adequate and effective presentation by counsel seeking earnestly and sincerely the result which he pretends to seek would be regarded by this court as binding upon it, especially in a case involving a federal question. In *Lord* v. *Veazie*, 8 How. 251, Mr. Chief Justice TANEY, after referring to the fact that the plaintiff and defendant were attempting to procure the opinion of the court upon a question of law, in the discussion of which they have a common interest opposed to that of other persons who are not parties to the suit and had no opportunity of being heard there in defense of their rights, said:

> "* * * The objection in the case before us is, not that the proceedings were amicable, but that there is no real conflict of interest between them; that the plaintiff and defendant have the same interest, and that interest adverse and in conflict with the interest of third persons, whose rights would be seriously affected if the question of law was decided in the manner that both of the parties to this suit desire it to be.
>
> "A judgment entered under such circumstances, and for such purposes, is a mere form. * * *"

In the present suit both the Board of Commissioners and the Trustees have been joined and served as necessary parties defendant, and have actively participated in this case and the interpretation of the statute has been and is necessary for the determination of the case. The man-

mus proceeding in the state court was instituted by the Board of Commissioners and the Trustees, being the two principal parties defendant to the present suit in the Federal District Court, for the obvious purpose of having the state court make an interpretation of the Everglades statute different from that which the federal district court herein had already made, and in effect reviewing the decision of the district court. No bondholder was or could have become a party to the mandamus proceeding in the state court, since under the law of Florida there is no right to intervene in such a mandamus proceeding. Although both the Board of Commissioners and the Trustees, the only parties to the mandamus proceeding, were seeking, on their inadequate presentation, the interpretation of the statute which the state court made, no opportunity was given to the bondholders of the District to be heard in a matter of such vital importance to them. Under the doctrine of *Erie R. R. Co.* v. *Tompkins*, 304 U. S. 64, this Court is not required, nor has its power or jurisdiction been lessened, to determine whether the obligation of a bond contract has been impaired or whether it will follow the interpretation by a state court of a statute constituting a part of the bond contract.

The Trustees now urge that if they are required to pay for the tax sale certificates and subsequent taxes on the bid off lands, the provisions of the Constitution of the State of Florida (Secs. 6 and 10, Article IX) prohibiting the issue of bonds of the State except for certain limited purposes, and providing that the credit of the State shall not be pledged or loaned, would be violated. This is a contention that an obligation of the Trustees of the Internal Improvement Fund is in substance a bond of the State of Florida, and that the payment of taxes on lands bid off for

and held by the Trustees is a pledge or loan of the credit of the State. The Trustees will not contend that all obligations incurred by the Trustees violate the State Constitution since the Trustees have incurred obligations of all kinds in the many years in which they have administered these lands of the State. Yet, for the present purpose, there is no difference between the obligations of the Trustees to pay taxes on the bid off lands, their obligation to pay taxes on the lands in the District other than bid off lands or obligations of other kinds incurred by the Trustees. The state court has held that the obligation to pay taxes on lands in the District other than bid off lands held by the Trustees is valid. *Everglades Sugar & Land Co.* v. *Bryan*, 81 Fla. 75, 87 So. 68; *Berry* v. *Hardee*, 83 Fla. 531, 91 So. 685; the state court has also held that the obligation of the Trustees to pay taxes on bid off lands is valid. *Martin* v. *Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449. The extent to which the Trustees may incur valid obligations and pledge their assets is also shown in *Trustees* v. *Bailey*, 10 Fla. 112. During the period in which the Trustees were paying the taxes on the bid off lands, the various Attorneys General of the State who were Trustees and as such participated in such payments, did not hold the opinion that such payments violated the State Constitution. When each of these Attorneys General in his written opinion stated as an inducement to the public to purchase the bonds, that "he unqualifiedly approved of the collectibility of said bonds and of the sufficiency of the taxing power back of them" (R. 16) he did not hold the view of the present counsel for the Trustees.

A decree enjoining the Trustees from acting under the unconstitutional statute would not violate the 11th amendment of the Constitution of the United States as has been

contended by the Trustees; public officers cannot claim exemption from suit while acting under an unconstitutional statute; *Hopkins* v. *Clemson Agricultural College*, 221 U. S. 636; *Tanner* v. *Little*, 240 U. S. 369; *Gunter* v. *Atlantic Coast Line R. R. Co.*, 200 U. S. 273; *Sterling* v. *Constantin*, 287 U. S. 378; *Trustees of Internal Improvement Fund* v. *Barley*, 10 Fla. 112. In the *Hopkins* case, Mr. Justice LAMAR said:

> "But a void act is neither a law nor a command. It is a nullity. It confers no authority. It affords no protection."

There is however express consent that the Trustees may be sued, as held in the cases: *Internal Improvement Fund* v. *Gleason*, 15 Fla. 384; *Wilson* v. *Mitchell*, 43 Fla. 107, 30 So. 703; *Trustees of Internal Improvement Fund* v. *Root*, 59 Fla. 648, 51 So. 535; *Trustees of Internal Improvement Fund* v. *Root*, 63 Fla. 666, 58 So. 371; *Everglades Sugar & Land Co.* v. *Trustees I. I. Fund*, 81 Fla. 75, 87 So. 68; *Martin* v. *Dade Muck Land Co.*, 95 Fla. 530, 116 So. 449, and in the Everglades statute (Chapter 6456, Sec. 23 as amended; R. G. S. Sec. 1182) where it is expressly provided that the provisions of that statute shall constitute an irrepealable contract between the Board of Commissioners and the holders of bonds of the District and that any bondholder by suit may compel the performance by any officer or person named in the statute of the duties required by the statute to be performed in relation to the bonds.

The legislature had power to provide in the Everglades statute which formed part of the bond contract that the Trustees of the Internal Improvement Fund should pay taxes on the lands bid off for them at tax sales, it did so provide, and the subsequently enacted statutes which pro-

vided that the lands should be bid off for the Board
Commissioners impaired the obligation of plaintiffs b
contract.

**II. The decree of the federal district co
granting the motions of defendants to dism
the bill of complaint and the supplemental bi
denying the application of plaintiffs for an
terlocutory decree enjoining the enforcem
of the 1937 statute of the State of Florida, a
denying the application of plaintiffs, to re
state the former interlocutory decree enjoini
the enforcement of the 1929 and 1931 statu
of the State of Florida, is erroneous.**

The statutes of the State of Florida of 1929, 1931 a
1937 impair the obligation of plaintiffs' contract and
prive plaintiffs of their property without due process
law as shown under Point I of this brief. The decree
the District Court, in denying the application of plaint
for an interlocutory injunction and for reinstatement
its former interlocutory decree, as well as in granting
tions of defendants to dismiss the bill and supplemen
bills, is erroneous.

CONCLUSION.

**The decree of the district court is erroneo
and should be reversed.**

Dated, March, 1939.

Respectfully submitted,

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